

**THE PARTICIPATION OF CIVIL SOCIETY
ORGANISATIONS IN THE LAW-MAKING PROCESS
IN VIETNAM WITH REFERENCE TO THE UNITED
KINGDOM**

The Participation of Civil Society Organisations in the Law-Making Process in Vietnam with Reference to the United Kingdom

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This first page of the thesis turns out to be the last page that I write down when the challenging and inspiring journey of my PhD course is reaching its destination. In this journey, I have learnt not only the knowledge but also a number of skills in doing academic research.

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Abstract

This thesis is designed to study the participation of the civil society organisations (CSOs) in the law-making process in Vietnam with reference to the United Kingdom. Public participation is a factor that can contribute to the process of legal reform and renovate the law-making process in Vietnam.

The study is motivated by three research questions: (1) Why the participation of CSOs in the law-making process is important and how this participation may enhance the quality and quantity of laws in Vietnam, (2) Why democracy plays a vital role in the law-making process and (3) What are the appropriate frameworks and supportive factors for CSOs to enable them to participate in the law-making process in Vietnam, with lessons learned from the UK?.

Applying diverse research methods including literature review, fieldwork, policy transfer, and case studies, the research has achieved certain significant findings. The thesis has proposed the definition of CSO with its particular features, the concept of CSOs in Vietnam and the UK, analysed the values of legislation and the current context of law-making in two countries. The thesis also investigated the case studies to examine the actual impact of the CSOs in the law-making process before making the proposal for a mechanism to recognise and effectively encourage the participation of CSOs in the law-making process.

Accordingly, the role of CSOs is confirmed throughout the whole law-making process, through various activities such as analysis, new evidence provision, lobbying, and petitions. The research also analysed the necessity and the role of the value of democracy in relation to other values of legislation in the law-making process. Social democracy was selected as the main model of democracy to adopt among several models of democracy worldwide. Several proposals were made as to conclude the research: the transparency in the legislative process should be enhanced, the use of

information technology to support the activities of the legislator and facilitate the participation of CSOs in the legislative process should attract more attention and investment from the government. In addition, the communication channels between the legislators and CSOs should be improved so that the 'trust' can be strengthened. Most fundamental and most difficult, the political culture that encourages people and CSOs to criticise and contribute their opinions to political, legal and social issues need to be encouraged. Otherwise, the values of legislation and the participation of CSOs in the law-making process cannot be maximised or achieved.

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CHAPTER 1: INTRODUCTION

1.1 Background

Integration into international trends is taking place in Vietnam across all aspects of the country's society, including its economy, culture, and politics. As an active member of the international community and a partner of international trade agreements such as the World Trade Organization (WTO),¹ the Association of Southeast Asian Nations (ASEAN), Vietnam-EU Free Trade Agreement (FTA),² and the Trans-Pacific Partnership (TPP),³ Vietnam not only has major opportunities but also faces many challenges, especially in the legislative sphere. Therefore, the legal process in Vietnam seeks to target the renovation of legislative drafting within the country.⁴

In the previous term of the National Assembly in Vietnam, from 2007 to 2011, around twenty laws were enacted and modified each year.⁵ If this situation is to be maintained, Vietnam will need to make a greater effort to create a sufficient framework for a legitimate state in the eyes of the

¹ WTO commitments regarding Vietnam and their implementation, <http://wtocenter.vn/>, accessed 25 December, 2015.

² Vietnam-EU Free Trade Agreement, <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/>>, accessed 25 December, 2015.

³ Trans-Pacific Partnership and Vietnam, <<http://www.trungtamwto.vn/tpp/toan-van-hiep-dinh-tpp>>, accessed 25 December 2015.

⁴ Resolution 48-NQ-TW of the Central Executive Committee of the Communist Party of Vietnam on the Strategy to build and reform the legal system of Vietnam from 2010 to 2020, dated 24 May, 2015.

⁵ According to the Report on the Activities of the National Assembly in Term XII (2007–2011), the number of laws enacted in each year was as follows: in 2007, eight laws; in 2008, 19 laws; in 2009, 18 laws; in 2010, 19 laws; and in 2011, three laws.

international community. There are many reasons leading to this requirement. One of them arises from a deficiency in the legislative process. Under the current Vietnamese legal system, the National Assembly, the Government, and Ministries are the law drafters. Even though draft laws and regulations are occasionally circulated to experts and interested parties for comments, civil society organisations (CSOs) in general do not become involved to much extent in the process of law drafting, thereby negatively affecting the quantity and quality of the law-making process.

Given the demands of modernisation and globalisation, Vietnam has recognised the need to undertake legal reform and renovate its law-making process through encouraging public participation in order to increase the number, and improve the quality and legitimacy, of its laws. In Section 1.5 of Resolution 48-NQ-TW of the Central Executive Committee of the Communist Party of Vietnam, *The Strategy to Build and Reform the Legal System of Vietnam from 2010 to 2020*, it is stated that the 'National Assembly and the whole executive system seek to strengthen the role and responsibilities of legal agencies and research institutes in the law-making process; propose a framework to attract the participation of social and professional associations, economic organisations, and experts in all stages of social needs assessment, legislative scheme planning, drafting, and scrutinising; [and] determine a mechanism to encourage social review and adopt public opinion during the law-making process'.

Accordingly, certain changes in the legal system have been made in order to implement this Resolution since the issue date of the document (24 May 2005). The Law on Promulgation of Legal Documents, the basic legal document which regulates the drafting and issuing process of Normative Acts, was modified in 2008 to offer more opportunity for public participation in the law-making process.⁶ The necessity of having the public and CSOs participate in the legislative process is also recognised in the Law on

⁶ The Administrative Law Faculty, *Textbook on Legal Drafting and Law-making* (Ho Chi Minh City: Hong Duc, 2012): 30–50.

Promulgation of Legal Documents 2015 by an independent article.⁷ However, a specific framework and mechanism to recognise and encourage effectively the participation of the public, especially the CSOs, in the law-making process are still being developed and have not yet been clearly defined. For example, in the public review stage of the drafting process of the United Enterprise Law 2005, the Bill team⁸ received a few review papers from some foreign investors, international donor agencies, and law firms. The participation of many social organisations and the public within the law-making process was limited because of the lack of a specific framework within which the CSOs could participate in the legislation and the limitation of information resources.⁹

Given this situation, the need to reform and improve the legal system in Vietnam, in terms of renovating the law-making process with a proper framework to encourage public participation, is strong. In addition, in order to be viewed as a legitimate state and to establish a more stable legal basis for the country, Vietnam needs to enhance its democracy. Part of such democratic development is to encourage more people to participate in the law-making process, thereby enabling the government to take advantage of the knowledge and experience of people and to make people more responsible for subsequently implementing laws. Moreover, establishing an effective mechanism to promote a freer flow of ideas and encourage a wide range of people, social organisations, and professional organisations to participate in the law-making process would enhance the social relation between the state and citizens, and the social interrelation among various

⁷ Article 6 of the Law on Promulgation of Legal Documents, No. 80/2015/QH13 (dated 22 June 2015) provided the right of the Vietnamese Fatherland Front and its organisation the Vietnam Chamber of Commerce and Industry (VCCI), together with all organisations and individuals, to contribute their opinions to the Bill and the draft of other normative documents.

⁸ A detailed explanation about the Bill team is given in Chapter 3.

⁹ Gillespie, J., *Localizing global rules: public participation in law-making in Vietnam*, *Law & Social Inquiry* 33, no. 3 (2008): 673–707.

groups of people. These factors will contribute deeply to the process of strengthening the legitimacy of the state¹⁰ and increase the quality of legislation.

These practical demands of the globalisation and modernisation processes should trigger detailed research into the law-making process and the participation of CSOs in the law-making process. Related fieldwork in Vietnam has also been undertaken with the participation of members of the National Assembly,¹¹ officers of the Government and National Assembly Office, and representatives of the CSOs. This fieldwork has suggested that if proper mechanisms are in place, these could create suitable conditions which would enable CSOs to participate in the legislative process and contribute their own specific in-depth knowledge. Such involvement would accelerate, and add great value to, the law-drafting process. The quality of legal documents would be significantly improved thanks to the multilateral perspectives of these organizations and appraisals from different viewpoints.

Some of the literature has indicated that in many countries which have an effective mechanism for CSOs to participate in the legislative drafting process, even if this is just at the stage of scrutiny during the passage of legislation in parliament, beneficial conditions for development can be enhanced. In Europe, the mechanism for CSOs to participate in the legislative process has been implemented in many countries. It is also recommended in the *White Paper on European Governance* and in this regard is part of the strategic direction for the development of member countries.¹² For instance, in the United Kingdom, the roles of CSOs in

¹⁰ Beetham, D., *The Legitimation of Power* (New York: Macmillan Education, 1991): 8–11.

¹¹ The details of the fieldwork in Vietnam are presented in Section 1.5.2 of Chapter 1.

¹² In the *White Paper on European Governance* of the Commission of the European Communities (Brussels, 25.7.2001 COM (2001) 428 final), session 1.1.2, a new consultation mechanism which ensures technical expertise provides as follows: 'The Commission is currently increasing the number of consultation platforms,

legislative processes are recognised not only during the entire legislative process, but specifically at the stages of pre- and post-legislation, as shall be explained in Chapter 3 and with the two case studies in Chapter 4 and Chapter 5 of this thesis.

Having been motivated by the importance and value of the participation of CSOs in the legislative process, the author undertook the research entitled *The Participation of Civil Society Organisations in the Legislative Process in Vietnam with reference to the United Kingdom*. This research draws from the experience of the United Kingdom in the field of legislative process and develops proposed mechanisms to analyse and improve the role and participation of CSOs in the legislative process in Vietnam.

1.2 Thesis, main research questions, and purpose

The aim of the thesis is to examine what the participation of civil society organisations in the legislative process in Vietnam with lessons learned from the United Kingdom can achieve. Therefore, the research attempts to investigate and systematise the law-making process in Vietnam by enhancing the involvement of CSOs. In addition, the research explores relevant experiences of the United Kingdom with regard to expanding this capacity. The case of Vietnam is reviewed and discussed from the perspective of how a developing country can learn from the experience of other countries which have a more developed legislative system. From this viewpoint, the research develops mechanisms to enhance the participation of CSOs in the law-making process in the context of Vietnam's current situation. Accordingly, the thesis addresses the following three main issues.

information sessions, hearings and forums. This "open" method provides for a public debate of the stakes involved in European policy, as well as the consultation of civil society.'

1. Why the participation of civil society organisations in the law-making process is important and how this participation may enhance the quality and quantity of laws in Vietnam?

2. Why democracy plays a vital role in the law-making process and why it is considered a tool to enhance democracy and the quality of laws in developing countries such as Vietnam?

3. What are the appropriate frameworks and supportive factors for CSOs to enable them to participate in the law-making process in Vietnam, with lessons learned from the arrangements in the UK?

In order to attain the target of addressing issues (1) and (2), the research focused on systematising and analysing the law-making process of Vietnam, with particular emphasis on highlighting and enhancing the participation of the CSOs in this process. In addition, the research took into account experience from the UK in the field of law-making process, including the history, culture, and social conditions which affect the development of UK law and the principles of UK law-making. Further, the context of democracy with regard to the law-making process in the UK and in some international organisations was examined. Fieldwork was also conducted in Vietnam and the UK to explore the views of members of Parliament, officers of the Government and Parliament Office, representatives of the CSOs, and experts.

In order to explore issue (3), the research established a specific goal to evaluate critically information about the impact of CSOs on legislation in terms of faster law implementation and better quality law. The author also proactively formulates and proposes measures to enhance the legislative process, improve the quality of the legal documents in Vietnam based on this framework.

Throughout the thesis, the underlying purpose is to contribute knowledge to the field of legal education and legal practice in Vietnam.

1.3 Originality and significance

To date, the literature related to politics, human rights, and democracy in Vietnam is limited and less diverse than in the UK. The list of basic references about politics provided by the library and information centre of the National University consists of 151 sources. In accordance with current conditions in Vietnam, most of these books are about Marxist-Leninist philosophy, the reasoning and ideology of President Ho Chi Minh, political economic theory, and the collection of official documents of the Communist Party in Vietnam. The literature about human rights and democracy is also basic. In four years (2009, 2010, 2011, and 2012), the Human Rights and Civil Rights Research Centre of The National University published 23 books and textbooks about human rights and civil rights.¹³ However, the major part of the list is simply the collection of translated international human rights conventions and protocols for use as reference materials for researchers in Vietnam.¹⁴

Given this situation, research conducted in Vietnam in the field of democracy and the participation of CSOs, even at the ministerial level, is still limited. There are some legal studies about civil society, non-governmental organisations (NGOs), and social political organisations, but they are not

¹³ The library and information centre of the National University
< <http://www.lic.vnu.edu.vn/>>, accessed 12 July 2013.

¹⁴ For example, *The Protection of Migrant Workers: A Collection of Vital Legal Documents from International Entities, ASEAN and Vietnam* (2009), *Basic Understanding about the Death Penalty* (2009, edited version in 2010), *Rights of Migrant Workers: A Collection of UN Conventions and ASEAN Legal Documents* (2010, edited version in 2011), *Human Rights – The Thematic Booklets of the UN* (2010), *Human Rights – A Collection of Comments from the UN Convention Committee* (2010), *Regulations about Migrant Workers in International and Vietnamese Law – A Basic Understanding* (2011), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, Alfredsson, G. and Eide, A. (translated version, 2011), and the *Collection of Constitutions of Several Nations of the World* (2012).

particularly related to CSOs. So far, most of the published research about civil society and CSOs in Vietnam is basic research conducted by some NGOs or international study programmes about Vietnam.¹⁵ However, as social research, these works basically concentrate on analysing aspects of social impact; practical surveys of the current situation of civil society and certain types of CSO in Vietnam; leadership and management experiences; and fundraising and funding sources. Therefore, these research are suitable as training manuals or reference literature for social studies rather than legal studies. Furthermore, although the terms 'civil society' and 'CSO' are being more frequently used by scholars, experts, and sponsors in the field of development and international studies, the connotations of 'civil society' and 'CSOs', and their features, are still insufficiently studied and not yet fully understood.¹⁶

Based on the current status of research on CSOs, this thesis claims originality with regard to three aspects. First, with regard to the literature

¹⁵ Some of the existing research are as follows: *Civil Society in Vietnam: A Comparative Study of CSOs in Hanoi and Ho Chi Minh City* by The Asia Foundation; *NGO/Civil Society Development in Vietnam* by Vietnam Assistance for the Handicapped; *The Image and Position of CSOs in the Vietnamese Media – The Result of a Survey of Five Newspapers and Two E-newspapers from July 2010 to June 2011* by Associate Professor, Dr Dinh Thuy Thuy Hang; and the *Civil Society Organisation Source Book: A Staff Guide to Cooperation with Civil Society Organisations* by the Asian Development Bank. Information about CSOs in Vietnam is also available to the public in the form of published documents of conferences such as The Role of CSOs in Fostering the Economic Development of Highland Areas, arranged by the Vietnam Union of Science and Technology Associations (VUSTA); The CSOs and Climate Changes Workshop, run by the Vietnamese non-governmental organisation (VNGO) network; and the CSOs and the Amendment of the Vietnamese Constitution conference, organised by the Institute for Studies of Society, Economy and Environment.

¹⁶ Pernille Friis (Programme Officer of the United Nations Development Programme (UNDP) Vietnam), 'The civil society as the "sand" to fill the gap', <<http://www.undp.org.vn/detail/newsroom/feature-details/?contentId=2345&languageId=4>>, accessed 15 June 2013.

survey and theory aspect, this thesis undertakes a broad survey of the background, especially of CSOs in Vietnam and the UK, and systematises the related elements in order to propose a definition of CSO with its concrete features. In addition, this thesis explores the reasons why the CSOs play an important role in society and what contribution they make through opportunities for CSOs to engage in the legislative process in Vietnam. Second, with regard to the practice aspect of CSOs in Vietnam and in the UK, this thesis conducts fieldwork with members of the National Assembly, officers of the Government and National Assembly Office, representatives of the CSOs, and experts in the field of legislative drafting. The objects of the fieldwork provided practical views about the research in terms of who directly participates in the law-making process, who directly and currently engages with organisational management, and who deals with the administration of CSOs and the activities of CSOs related to law-making. The fieldwork provided comprehensive and original views on the practical participation of CSOs in the law-making process in Vietnam in terms of opportunity, role, and the factual issues from the perspective of insiders. Third, as the first policy transfer study between Vietnam and the UK regarding the participation of CSOs in the law-making process, this thesis has scrutinised the regulations of CSOs and the law-making processes in Vietnam and the UK. Fourth, the thesis also presents some concepts which are originally developed, including the definition of CSOs, the concept of CSO in Vietnam and the UK. These concepts are analysed in section 1.4.1 and section 2.3 of the thesis. Some solutions are recommended on this basis.

The research is equally significant in its efforts to improve the Vietnamese legislative system with regard to two aspects. First, the research creates a comprehensive body of specialist knowledge about CSOs and the law-making process in Vietnam. It also evaluates the factual conditions of the participation of CSOs in the law-making process based on the values of effectiveness, efficiency, democracy, and participation of legislation. Second, the research seeks to provide a programme of reform to improve and facilitate the participation of CSOs in the legislative process in Vietnam with lessons learned from the UK. This final outcome significantly contributes to

the renovation process of the legal system and assists the target of enhancing the democracy of the Vietnamese state. Since the social, legal, and political conditions of Vietnam are different from those of the UK, the lessons drawn and the proposed programme of reform will take serious account of the pros and cons of 'policy transfer'¹⁷ given in Chapter 2, Chapter 3, and two case studies in Chapter 4 and Chapter 5 in order to make a proper proposal. In addition, this thesis can also be used as a reference for researchers who would like to study the legislative process in Vietnam, and as a source of legal knowledge for legal education.

1.4 Delimitation and definitions

1.4.1 The Civil Society Organisation (CSO)

The term 'civil society' has been recognised since the early eighteenth century by many countries and by philosophers such as Adam Ferguson, Adam Smith, Karl Marx, and Hegel.¹⁸ Civil society, in general, is associated with the meaning of 'people power'.¹⁹ Further, its core is 'social interaction', including the social interaction between the economy and the state, the interaction of associations, and the interaction of social movements in order to develop public communication.²⁰ Civil society provides common channels through which most people can make their voices heard with regard to governmental decision-making and through which people can protect their civil and political rights. Civil society also provides an effective mechanism to control the abuse of state authority. Some vehicles which are used to implement the purposes of a civil society include charities, neighbourhood self-help schemes, international bodies such as the UN or the Red Cross,

¹⁷ The issue of 'policy transfer' is presented in detail in Section 1.5.3 of the thesis.

¹⁸ Shil, E., *The Virtue of Civil Society. Government and Opposition* 26, No. 1 (1991): 5.

¹⁹ Edwards, M., *Civil Society* (Cambridge: Polity Press, 2009): 15.

²⁰ Cohen, J. L. and Andrew A., *Civil Society and Political Theory* (Cambridge: MIT Press, 1994): vi.

religious-based pressure groups, human rights campaigns in repressive societies, and NGOs. One of the components of civil society and society in general is the CSO. However, its features, functions, and roles have not received adequate attention and have not been defined sufficiently. The unclear status of the CSO, to some extent limits democracy and causes certain effects regarding the participation of the CSO in civil society, especially in the areas of law and policymaking.

The establishment of CSOs is associated with the development of civil society in the modern world. CSOs act as tools to implement the functions and purposes of a given policy within a civil society. Indeed, CSOs have a crucial role in the development process of society as innovative agents of change and social transformation, especially in the twenty-first century.²¹

Although CSOs operate around the world, and the term CSO already appears in different forms in various documents, a definition of CSOs is largely unrecognised in any official and international legal sense as the analysis in section 1.1. Hence, one of the first missions of this thesis is to consider a definition of CSOs. The definition is based on the facts, features, and functions of these organisations. Thus, an initial definition is that a CSO is as follows.

‘A civil society organisation is an independent and public-oriented organisation. It may have legal personality with the common purposes of representing and protecting its members’ legitimate rights and interests and pursuing its goals in non-violent ways.’

²¹ The Global Facilitation Group for the Open Forum for CSO Development Effectiveness, ‘An open forum for CSO development effectiveness: a progress report, July 2008’, Report (2008).

Viewed from this perspective, using the approach advocated by the 'ordinary language school',²² an organisation can be recognised as a CSO when it demonstrates six main features: it is an organisation, independent, public-oriented, uses non-violent methods to achieve its goals, has legal personality, and has a common purpose. There are some features which are essential for CSOs to have and some which are not mandatory but nonetheless enable CSOs to function more effectively. Therefore, CSOs are expected to adopt essential and non-mandatory features. Each of these features is now examined for meaning and relevance.

The first feature concerns the idea of being an organisation. Organisations can be defined as 'social systems of cooperation that are designed to enhance individual effort aimed at goal accomplishment'.²³ Being an organisation, or working in a group in other words, is the inner self-demand of a CSO since this enables the members of a CSO to combine their talents and efforts in order to support each other and thereby achieve larger goals which cannot be accomplished by individuals. Being an organisation also makes a CSO more democratic because one of the factors which build democracy is ensuring that decisions are reached in accordance with majoritarian principles rather than by individual dictate. However, the roles of individuals, particularly that of the leader, must not be excluded from organisations because individuals are the means of determining direction, suggesting activities, and implementing the action plans of organisations.

In order to work effectively and exist as an organisation, a CSO must comply with certain minimum requirements for a well-organised group. These requirements are: (a) to be a consciously coordinated social entity; (b) have a relatively identifiable boundary; and (c) have the ability to function on a relatively continuous basis in order to achieve a common goal or set of

²² Hart, H.L.A., *The Concept of Law* (2nd edn, London: Oxford University Press, 1994): 98–99.

²³ Hodge B.J. and Anthody, W.P., *Organization Theory* (3rd edn, New Jersey: Allyn and Bacon, 1988): 7.

goals.²⁴ These mean that an organisation must have: an adequate management system for coordinating the interactive patterns of people; a definable boundary in order to distinguish members from non-members; and some continuous bonds which require members to participate with some degree of regularity and with a specific goal or goals.²⁵ In accordance with this view, organisations and civilisation are practically synonymous: without organisations, civilisation could not exist.²⁶ Therefore, a CSO must first be an organisation.

The second feature concerns the 'independence' of a CSO. In order to work for the public interest and be objective, a CSO should be independent in at least two aspects: its funding and its working plan. A CSO may have to be established and operated under the law of a country or in accordance with international conventions which are approved by government and international organisations. A CSO may also have close connections with liberal political groups.²⁷ Nevertheless, a CSO should keep itself at a distance from the state so as to minimise the effects of specific policies and/or direct political regulations on its working plans.

This necessary feature may be challenged because in some countries a CSO or indeed any organisation must register with the government. In the report A/70/266 of the United Nations about the rights to freedom of peaceful assembly and of association, the Special Rapporteur emphasised the premise that states have an obligation under international law to take measures to protect and promote these rights: 'Associations should never be

²⁴ Robbins, S.P., *Organization Theory: Structures, Designs, And Applications* (3rd edn, New Jersey: Prentice-Hall, 1990): 4.

²⁵ *Ibid*

²⁶ Hicks, H.G. and Gullett, C.R., *Organizations: Theory and Behaviour* (New York: McGraw-Hill, 1975): 1.

²⁷ Omer, Ç.A.H.A., *The inevitable coexistence of civil society and liberalism: the case of Turkey*, *Journal of Economic and Social Research* 3, No. 2 (2001): 35–50.

required to register. Allowing unregistered associations is fundamental to a good enabling environment for civil society.²⁸ According to this argument, requiring an organisation to register causes the organisation to lose its independence to some extent. However, in some countries registration is required in accordance with specific perspectives. Vietnam and Malaysia may be taken as examples.

Vietnam regulates the establishment and registration of associations by Decree No.45/2010/ND-CP²⁹ and Decree No. 33/2012/ND-CP³⁰ of Government. Article 1, Decree No. 33/2012/ND-CP provides that: 'After completing the preparations for the association's establishment, the Board that campaigns for the establishment of associations shall submit a set of dossiers to the Ministry of Home Affairs, for associations operating nationwide or within provinces; to a provincial-level Department of Home Affairs, for associations operating within a province, district, or commune; or to a district-level Home Affairs Division (when the chairperson of the provincial-level People's Committee has authorised the chairperson of the district-level People's Committee to licence the establishment of associations operating within a commune).³¹ Section 2, Article 1 of the Decree states that, within 30 working days after receiving a complete and lawful dossier as prescribed in Article 7 of Decree No. 45/2010/ND-CP³², the competent state

²⁸ The report of the United Nations about the rights to freedom of peaceful assembly and of association, A/70/266, dated 4 August 2015, page 8.

²⁹ Decree No.45/2010/ND-CP on the Organisation, Operation and Management of Associations, dated 21 April, 2010.

³⁰ Decree No. 33/2012/ND-CP on Amending and supplementing some articles of Decree No.45/2010/ND-CP, dated 13 April 2012

³¹ Ibid.

³² Article 7 of Decree No. 45/2010/ND-CP provides that the full dossier of an application must consist of: i/ the application for a permit to establish an association; ii/ the draft charter; iii/ the projected operation plan; iv/ the list of members of the association's establishment-canvassing board recognised by a competent state body; v/ the curriculum vitae of the head of the association's establishment-canvassing board, with certification by a competent agency; vi/ documents certifying

agency shall consider and licence the establishment of the association. In the event of a refusal, the competent state shall issue a written reply which clearly states the reason for refusal. Without successful registration with the competent state agencies,³³ an organisation shall not be recognised as a lawful organisation to operate in Vietnam.

Similarly, in Malaysia registration is mandatory for all NGOs and other organisations.³⁴ Organisations or NGOs, in accordance with their structures, targets, and types of organisation, can be registered under several regulations of the Societies Act 1966, the Companies Act 1965, the Income Tax Act 1967, and the House-to-House and Street Collection Act 1947. Some NGOs may register under specific acts (e.g. the Sports Commission Act or the University and University Colleges Act 1971). However, despite the requirement for registration in Vietnam and Malaysia, there are no additional legal rules in these countries which state that the annual working plans of all organisations must be approved by the government or state. Consequently, all social organisations in principle have the right to decide their targets and the way to achieve these targets. A CSO, therefore, may accept a certain interaction with the government which makes it less than fully independent so long as it is not under the government's control and is not liable to interference from other groups,³⁵ or is not significantly dependent upon the

details of the head office; and vii/ a declaration of the assets which will be contributed by the establishment-canvassing board member (if any).

³³ Article 14 of Decree No. 45/2010/ND-CP provides for the competent state agencies which associations should register with as follows: (i) the Minister of the Interior shall permit the establishment, and approve the charters, of associations operating nationwide or inter-provincially, and (ii) the provincial-level People's Committee presidents shall permit the establishment, and approve the charters of, associations operating within their respective provinces.

³⁴ A summary of regulatory systems for NGOs in Malaysia (September 2006) <www.ngoregnet.org/Library/Malaysia_website.doc>, accessed 20 November 2013.

³⁵ Section 5 of the Trade Union and Labour Relation Act 1992 defines the meaning of an 'independent trade union' as one that

government for financial and moral support or approval.³⁶ Viewed from this perspective, a CSO may receive financial contributions from governmental sources but only to a limited extent. Therefore, when the government stops the contribution, the CSO is capable of maintaining itself³⁷ and retains its ability to make decisions on its working plan and funding.

The approach to regulating the registration of associations by a law is currently being considered by the National Assembly in Vietnam in its draft of the Law on Associations. In the plenary meeting of the National Assembly, term XIII, on 23 December 2015, the National Assembly discussed the Bill on Associations. Article 2 of the Bill provides that associations in Vietnam can be either registered or non-registered. The Bill on Associations is expected to be passed in term XIV of the National Assembly in the second half of 2016. The Bill on Associations is expected to 'blow fresh air into the activities of the organisations' in Vietnam³⁸ because when the Bill becomes an Act it will play a vital role in regulating the organisations' activities. However, the Bill is still under consideration because some issues are still controversial; for instance, the scope of the law (e.g. should the Fatherland Front be regulated by the law, and should some organisations or groups with established bases and activities be included in the law?); membership for foreigners (e.g. should foreigners be accepted as members of domestic organisations?); and

(a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and

(b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control.

³⁶ Rosenau, J.N., 'NGOs and Fragmented Authority in Globalizing Space', paper presented at the Third Pan-European International Relations Conference and Joint Meeting with the International Studies Association, Vienna, Austria (1998).

³⁷ Martens, K., 'Mission Impossible? Defining Non-governmental Organisations', *Voluntas* (2002) 10.

³⁸ Bill on Associations

<<http://vneconomy.vn/thoi-su/luat-ve-hoi-se-thoi-luong-sinh-khi-moi-vao-xa-hoi-20151206080146646.htm>>, accessed 17 May 2016.

financial support for organisations (e.g. should the government subsidise, or grant financial support for, specific groups of organisations?).³⁹

Reviewing both sides of the argument, it is noted that being ‘independent’ is a vital requirement for a CSO. In the context of the law-making process, the ‘independent’ factor of a CSO is mainly expressed by its independence from the state interference when presenting their views. However, it seems unrealistic to require absolute independence for CSOs because the term ‘CSO’ reflects a need for cooperation and embeddedness. Depending upon the specific conditions of the politics, culture, and society of each country, an organisation can be required either to register or not as long as it can retain the ability to decide its working plan and control the funding. With regard to this point, the legal framework of the UK for CSOs can be considered a flexible and more neutral model that other countries may wish to take into consideration. In the UK, the government does not interfere with the ‘independence’ of CSOs by issuing any general Act on associations which strictly requires all CSOs to register in order to be recognised. There are some exceptional cases of registration for CSOs, but most CSOs are managed by social and not legal demand.

The exceptional cases fall under the Political Parties, Elections and Referendums Act 2000 and the Trade Union and Labour Relations (Consolidation) Act 1992. According to the former Act, in order to regulate the management and finance of political parties, such parties must register with the Electoral Commission and comply with the requirements of Part I of Schedule 4 of the Political Parties, Elections and Referendums Act 2000.⁴⁰

³⁹ National Assembly discussion on the Bill on Associations

<<http://www.nhandan.com.vn/chinhtri/tin-tuc-su-kien/item/27953702-trinh-quoc-hoi-du-an-luat-ve-hoi.html>>, accessed 17 May 2016.

⁴⁰ Part I of Schedule 4 of the Political Parties, Elections and Referendums Act 2000 provides registration conditions with which a political party must comply, including: an English, Welsh, Irish, or English translation name; the address of the party’s headquarters; the list of registered officers (including the party’s leader, the party’s

Similarly, in order to protect the rights of employees and regulate the relation between employers and employees, the Trade Union and Labour Relations (Consolidation) Act 1992 provides that if an organisation seeks to identify itself as a trade union, it must register with the Certification Officer in order to enter the list of trade unions.⁴¹

In terms of social organisations, the Charities Act 2011 is the most relevant Act in the UK as it governs the widest range of social organisations. The number of registered charities in the UK under Charities Act 2011 to 31 March 2016 is 165,277;⁴² meanwhile the number of registered political parties under the Political Parties, Elections and Referendums Act 2000 to 26 April 2016 is 429 organisations;⁴³ and the number of trade unions under the Trade Union and Labour Relations (Consolidation) Act 1992 to 14 October 2014 is 156 organisations.⁴⁴ Although the Charities Act 2011 provides that every charity should be registered;⁴⁵ there are certain exceptions when an organisation is an exempt charity or a charity which for the time being is permanently or temporarily exempted by order of the Charity Commission or complies with certain conditions of income.⁴⁶ Regardless of registration, the

nominating officer, and the party's treasurer); the party's constitution and organisation; additional information (depending upon the requirements of each specific case); and a signature.

⁴¹ Section 2, Chapter 1, the Trade Union and Labour Relations (Consolidation) Act 1992.

⁴² Charity Commission: Official Statistics – Recent Charity Register Statistics, < <https://www.gov.uk/government/publications/charity-register-statistics/recent-charity-register-statistics-charity-commission>>, accessed 16 May 2016.

⁴³ Electoral Commission, < <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/political-party-registration>>, accessed 16 May 2016.

⁴⁴ Certification Officer: Corporate Report, Trade Unions: The Current List and Schedule, 14 October 2014.

⁴⁵ Section 30, Charities Act 2011, UK.

⁴⁶ Section 30, Part 4, 'Registration and Name of Charities', of the Charities Act 2011 provides exemption for a charity whose gross income does not exceed £5,000.

organisations in the charity sector in England and Wales are recognised as independent units subject to working with the Charity Commission,⁴⁷ a non-ministerial government department. The Charity Commission is meant to be independent of ministerial influence and independent of the sector which it regulates.⁴⁸

Drawing a boundary between funding activity and the wish of the government to have specific power to control the internal schedule of an organisation is a possible cause of concern. The argument that registration makes organisations lose their independent status is not always valid. The UK Equality and Human Rights Commission (EHRC) can be taken as an illustration of this point. The EHRC is a state-based organisation,⁴⁹ but it states clearly that it is independent of government when it develops annual strategic plans without governmental influence.⁵⁰ The the independence feature of the EHRC was illustrated by the court case which the EHRC brought against the UK Prime Minister.

In *The Equality and Human Rights Commission v. The Prime Minister*,⁵¹ a representative of the EHRC brought a claim to the High Court of

⁴⁷ Charities Act 2006 review, Cabinet Office, <<https://www.gov.uk/government/consultations/charities-act-2006-review>>, accessed 23 February 2013.

⁴⁸ About the Charity Commission, <http://www.charity-commission.gov.uk/About_us/About_the_Commission/Our_status_index.aspx>, accessed 23 February 2013.

⁴⁹ EHRC Visions and Missions, <<http://www.equalityhumanrights.com/about-us/vision-and-mission/>>, accessed 31 March 2013.

⁵⁰ EHRC Visions and Missions, <<http://www.equalityhumanrights.com/about-us/vision-and-mission/>>, accessed 31 March 2013.

⁵¹ *The Equality and Human Rights Commission v. The Prime Minister*, The Secretary of State for Foreign and Commonwealth Affairs, The Secretary of State for the Home Department, The Secretary of State for Defence the Attorney General (2011) EWHC 2401.

Justice against the Prime Minister regarding the expression 'serious risk' in a document entitled *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees* because it implies that there may be circumstances in which the 'Policy regarding torture and cruel, inhuman and degrading treatment or punishment' (CIDT) may be condoned and those who act in accordance with it will not risk personal liability. The EHRC proposed that the threshold test should be 'real risk' and not 'serious risk' because the latter refers to an undefined level of probability and requires intelligence officers to consider and determine the level of risk and the standard of seriousness.

In addition, in the joint judicial review proceedings, the EHRC and Mr Al Bazzouni called for the prohibition of the hooding of detainees because it relates to torture and cruel, inhuman, and degrading treatment which falls outside the law's permission.⁵² The claimants argued that putting a hood over a person's head compulsorily is assault and battery, and is thus both a tort and a crime in common law and infringes rights under Article 3 of the European Convention on Human Rights.⁵³ The High Court made a judgement that the claim failed for a number of reasons, including that there is no material difference between a 'real risk' and a 'serious risk' in the context of torture or cruel, inhuman, or degrading treatment (CIDT). In addition, in the context of torture or CIDT, a 'real risk' must be a risk that is serious because torture and CIDT are by universal consent serious. However, in the latter part of the argument, the High Court agreed that the Annex should be changed to omit hooding from the ambit of the exception.

⁵² *Alaa' Nassif Jassim Al Bazzouni v. The Prime Minister, The Secretary of State for Foreign and Commonwealth Affairs, The Secretary of State for the Home Department, The Secretary of State for Defence the Attorney General* (2011) EWHC 2401.

⁵³ Article 3 of the European Convention on Human Rights provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Reflecting on the case, the fact that the EHRC is sponsored by the government's Equalities Office but the Office had no impact on this decision. The independence feature is, therefore, essential for CSOs to be more effective in their work. Yet the structure and dynamic aspects of a CSO in terms of their actual work are the crucial criteria that qualify an organisation as a CSO, rather than a strict no-funding principle. The EHRC is fully sponsored by the government's Equalities Office; however, it still has the right to follow the visions and missions of an organisation such as a CSO.

The third trait of a CSO which is associated with the feature of independence is its legal status. Legal status is the recognition of an organisation before the law. The legal status of an organisation may reflect the recognition by a government of the organisation through its registration. For example, in Malaysia, every NGO, including charitable corporations and societies, must have a legal personality through registration with the authorised units if they wish to carry out activities in their own names.⁵⁴ However, in Vietnam, there are no other provisions which require all organisations to have legal status, especially in terms of a formal legal entity. In order to have legal status in Vietnam, an organisation has to comply with four conditions provided in Article 74 of Civil Code 2015.⁵⁵ According to Article 100 of the Civil Code, legal entity and legal status do not apply to all organisations in Vietnam. Article 2 of the Bill on Associations which was presented to the National Assembly term XIII on December 2015 also suggests the need for recognition for associations with and without legal entities.

⁵⁴ Summary of regulation systems for NGOs in Malaysia (September 2006) www.ngoregnet.org/Library/Malaysia_website.doc, accessed 24 February 2013.

⁵⁵ Article 74, Civil Code 2015, No.91/2015/QH13, dated 24 November, 2015 of Vietnam provides that an organisation shall be recognised as a legal entity and has legal status if it satisfies all of the following conditions: (i) it was legally established, (ii) it has a sophisticated organisational structure, (iii) it has property which is independent of other individuals and organisations and it fulfils voluntarily its obligations by recourse to such property, and (iv) it participates independently in legal relations in its own name.

In the UK, there is no provision for the mandatory legal status of organisations since freedom of association is recognised in the Human Rights Act 1998.⁵⁶ According to Article 11, people have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. Hence, legal status may help. Having legal status is not a compulsory feature of an organisation, however, in general, an association with a legal entity can obtain a more advantageous status; for example, tax exemption. Charities registered under the Charities Act and which have clear charitable purposes⁵⁷ may claim exemption from tax on income and capital gains under sections 466 to 493 of the Corporation Tax Act 2010 and sections 521 to 536 of the Income Tax Act 2007.

A fourth core feature of a CSO appears to be ‘public orientation’. There are different terms to express the purpose of ‘public orientation’ in each country, but generally it can be described as working for public welfare and providing chances for different groups of people to ensure that their voices are heard on specific issues which they are concerned about. For example, In Vietnam, ‘public orientation’ is not provided for literally in Decree No. 45/2010/ND-CP,⁵⁸ the current legal document which regulates associations. However, in Decree No. 45/2010/ND-CP, when defining ‘associations’, the Decree and the Bill clearly provide for associations ‘aiming to contribute to the country’s socio-economic development’.⁵⁹ In the Bill on Association presented in the 42nd plenary meeting of the National Assembly, ‘public orientation’ is also recognised as one of the functions of organisations

⁵⁶ Sections 12 and 13 of the Human Rights Act 1998 of the UK.

⁵⁷ The ‘charitable purposes’ of charities are provided in Section 2 and Section 3(1) of the Charities Act 2011.

⁵⁸ Decree No.45/2010/ND-CP on the Organisation, Operation and Management of Associations, dated 21 April, 2010.

⁵⁹ Ibid, Section 1, Article 2

See also at Article 2 of the Bill on Associations 2015.

with the use of same phrase as in Decree No. 45/2010/ND-CP, which is ‘to contribute to the country’s socio-economic development’.⁶⁰ A concrete explanation for what can be considered as ‘contributing to the country’s socio-economic development’ can be provided in the implementing documents of the Law on Association when the Bill is passed as law. In the UK, ‘public orientation’ is often referred to as having a charitable purpose, which means within the concept of a ‘public benefit’. In the UK, ‘public benefit’ is the legal requirement which every organisation set up for one or more charitable purposes must demonstrate when they register in England and Wales.⁶¹ Accordingly, the aims of organisations must be identifiable benefits, and the benefits must be for the public or a section of the public as provided for in Section 3 of the Charities Act 2011 of the UK.⁶²

It is important to dwell a little longer on this feature because the ‘public orientation’ of CSOs is also proposed as one of the features of NGOs. Therefore, many sources consider CSOs as merely NGOs or alternatives to

⁶⁰ Article 23, Bill on Associations 2015.

⁶¹ The Charity Commission’s general guidance on public benefit, <<http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/>>, accessed 25 June 2013.

⁶² Section 3, Part 1 of the Charities Act 2011 of the UK describes charitable purpose as

- (a) the prevention or relief of poverty; (b) the advancement of education; (c) the advancement of religion; (d) the advancement of health or the saving of lives; (e) the advancement of citizenship or community development; (f) the advancement of the arts, culture, heritage, or science; (g) the advancement of amateur sport; (h) the advancement of human rights, conflict resolution, or reconciliation, or the promotion of religious or racial harmony, or equality and diversity;
- (i) the advancement of environmental protection or improvement; (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship, or other disadvantage;
- (k) the advancement of animal welfare; (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire, and rescue services, or ambulance services.

NGOs.⁶³ Steve Waddell, Director of The Collaboration Works in Boston, stated about his own organisation that CSOs are NGOs, including religious, labour, and community-based organisations (CBOs).⁶⁴ There certainly are points of resemblance between CSOs and NGOs. However, CSOs and NGOs have their own distinctions. NGOs are enabled to participate in the UN system by Article 71.⁶⁵ Further, according to the UN, NGOs are primarily understood as international bodies⁶⁶ while CSOs are national-level units. However, nowadays, in addition to the classic model of NGOs, there are countrywide organisations which are called national NGOs. National CSOs frequently combine into an international NGO and are covered by a global body.⁶⁷ Therefore, most international NGOs can be segmented to include domestic CSOs when they start to carry out certain activities in one country or simply enrol individual members at the national level without having any more country branches.⁶⁸

The fifth feature is that the 'common purpose' of an organisation should be taken into account. Each organisation is initially built to accomplish a certain goal. Consequently, this goal or purpose becomes the starting point

⁶³ Charnovitz, S., *Nongovernmental Organizations and International Law*, American Journal of International Law (2006), Vol. 100, No. 2.

⁶⁴ Waddell, S., *Core Competences: A Key Force in Business-Government-Civil Society Collaborations*, Journal of Corporate Citizenship (2002) 43.

⁶⁵ Article 71, United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI provides as follows: 'The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned'.

⁶⁶ Martens, K., *Mission Impossible? Defining Nongovernmental Organizations*, Voluntas (2002): 3.

⁶⁷ Willetts, P. (2002), 'What is a non-governmental organization?' Output from the Research Project on Civil Society Networks in Global Governance, <<http://staff.city.au/CS—NTWKS-ART.HTM>>, accessed 8 February 2013.

⁶⁸ Ibid.

for building the organisation and the benchmark for measuring its success.⁶⁹ A common purpose defines the path which a CSO follows and the targets which members of the organisation desire to achieve. However, the aims of an organisation are sometimes contradictory. Balancing the conflicting points of view of members is not easy. The leader of an organisation has to harmonise horizontal differentiation in order to establish the common purpose of the organisation. This requires general agreement with the mission of the organisation.⁷⁰

In order to achieve the goal of setting out the common targets for the organisation, a course of action must be defined based on the organisation's core value, the understanding of the primary and secondary beneficiary needs and expectations, resource availability, and management philosophy and practice.⁷¹ Since the fourth feature of CSOs is 'public orientation', the common purpose of a CSO should be its published interest. In order to be successful in setting the common purpose of a CSO, it seems that a management style which begins with the senior levels setting the basic direction for the entire organisation is not always helpful. The common purpose should come with persuasion and begin with the power of the members. When members of an organisation realise that through the pursuit of a purpose, they will achieve at least some of their personal goals, the common goal will be set.⁷²

The last feature which makes a CSO distinct from many other organisations is the 'non-violent' methods it uses to achieve its goals. This

⁶⁹ Hodge, B.J. and Anthody W.P., *Organization Theory* (3rd edn, New Jersey: Allyn and Bacon, 1988): 11.

⁷⁰ Robbins, S.P., *Organization Theory: Structures, Designs, and Applications* (3rd edn, New Jersey: Prentice Hall, 1990): 5.

⁷¹ Hodge, B.J. and Anthody, W.P., *Organization Theory* (3rd edn, New Jersey: Allyn and Bacon, 1988): 283.

⁷² Hicks, H.G. and Gullett, C.R., *Organizations: Theory and Behaviour* (New York: McGraw-Hill, 1975): 46.

feature is shared with NGOs, and it has been maintained that the non-violent character of CSOs distinguishes them from groups which use force to achieve their aims, such as terrorists, national guerrilla or liberation organisations, organised crime, and the mafia.⁷³ There are various forms of non-violent action in political science which a CSO may find suitable to achieve its aim; for instance, the methods of non-violent protest and persuasion (by public speeches, letters of opposition or support, declarations, and public statements), group or mass petitions, group lobbying, and social non-cooperation.⁷⁴

The feature of using non-violent methods to achieve goals is not always mentioned clearly in the establishment documents of all CSOs. For instance, in the Bill on Associations 2015 of Vietnam, the 'non-violent' feature of a CSO is not mentioned in any article. The 'non-violent' characteristic of all organisations can be understood indirectly by the principle that all activities of all types of organisation must obey the constitution and laws in Vietnam.⁷⁵ At the international level, according to Resolution Res(2003)8 of the Council of Europe,⁷⁶ one of the conditions to be met by an NGO or an international non-governmental organisation (INGO) is to be non-violent.⁷⁷ However, in the UN

⁷³ Martens, K., *Mission Impossible? Defining Nongovernmental Organizations*, *Voluntas* (2002): 9.

⁷⁴ Sharp, G., *The Politics of Nonviolent Action*, Part Two, *The Methods of Nonviolent Action* (Porter Sargent, 1973): 117.

⁷⁵ Article 6, the Bill on Association 2015.

⁷⁶ Resolution Res(2003)8 of the Council of Europe about participatory status for international non-governmental organisations with the Council of Europe, adopted by the Committee of Ministers on 19 November 2003 at the 861st meeting of the Ministers' Deputies.

⁷⁷ The conditions for an INGO to be recognised and granted participatory status under Res (2003)8 of the Council of Europe include:

'a. which are particularly representative in the field(s) of their competence, fields of action shared by the Council of Europe;

Charter or other UN Treaties such as the International Convention for the Suppression of Terrorist Bombings,⁷⁸ definitions of violence and non-violence are not specified directly. Depending upon the specific facts of each case, the United Nations shall consider and make a judgement about the recognition of any violent activities. One of the cases which illustrates this point is that of the Islamic Emirate of Afghanistan (known as the Taliban). The Taliban is an Afghan faction which exercised control over Afghanistan until 2001. The Taliban was declared in 1999 to be a violent faction since it is a threat to international peace and security.⁷⁹ The Taliban sheltered and trained terrorists and provided a safe haven for Al Qaida in Taliban-controlled territory. Therefore, the UN demanded that the Taliban cease all activities related to terrorism and violence, and comply with Resolution 1267 (1999) of the UN.⁸⁰ In addition, the Islamic Emirate of Afghanistan is requested to take appropriate, effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organisation of terrorist acts against other states or their citizens, and to cooperate with international efforts to bring indicted terrorists to justice.⁸¹ Violence and terrorism are also prohibited in Vietnam by the Law on Counter-

b. which are represented at European level, that is to say which have members in a significant number of countries throughout greater Europe;

c. which are able, through their work, to support the achievement of that closer unity mentioned in Article 1 of the Council of Europe's Statute;

d. are capable of contributing to and participating actively in Council of Europe deliberations and activities;

e. which are able to make known the work of the Council of Europe among European citizens'.

⁷⁸ UN General Assembly, *International Convention for the Suppression of Terrorist Bombings*, 15 December 1997, No. 37517.

⁷⁹ UN Security Council, *Resolution 1267 (1999) Adopted by the Security Council at its 4051st meeting on 15 October 1999*, 15 October 1999, S/RES/1267 (1999).

⁸⁰ Ibid.

⁸¹ UN Security Council, *Resolution 1333 (2000) / adopted by the Security Council at its 4251st meeting*, 19 December 2000, S/RES/1333(2000).

Terrorism.⁸² Accordingly, ‘the acts of organisations or individuals which aim to challenge the government; coerce the government, foreign organisations, and international organisations; cause difficulties to the international relations of the Socialist Republic of Vietnam; or cause public panic’ can be considered as terrorism and violent.⁸³

In the UK, Part II of the Terrorist Act 2000 also provides a list and criteria to enable the recognition of ‘proscribed organisations’. Accordingly, an organisation will be proscribed if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, and/or is otherwise concerned with terrorism.⁸⁴ From this stance, an organisation can be considered violent if it creates a threat to international peace and security or is involved in terrorism. However, some CSOs have occasionally been accused of violent means. For example, Greenpeace is an NGO which promotes peaceful methods by investigating, exposing, and confronting environmental abuse, and championing environmentally responsible solutions.⁸⁵ Nonetheless, Greenpeace’s activists used to be accused of using violence against the Japanese whaling fleet when trying to prevent the harvesting of the whales and were involved in a violent case when they were shot by Nordic whale hunters.⁸⁶ In 2010, Greenpeace was also convicted of theft and trespass when its activists conducted an investigation of the black market trade in whale meat from the so-called ‘scientific’ whaling programme which is funded by Japanese taxpayers.⁸⁷ However, Greenpeace claims that

⁸² Law on Counter-Terrorism No.28/2013/QH13, dated 12 June, 2013.

⁸³ Ibid, Article 3.

⁸⁴ Section 5, Part 2, Terrorism Act 2000.

⁸⁵ About Greenpeace, <<http://www.greenpeace.org.uk/what-we-do>>, accessed 26 February 2013.

⁸⁶ Whaling captain convicted of shooting at Greenpeace, <<http://www.greenpeace.org.uk/oceans/whaling-captain-convicted-of-shooting-at-greenpeace>>, accessed 7 June 2013.

⁸⁷ Unjust sentence for Japanese anti-whaling activists, <<http://www.greenpeace.org/international/en/news/features/Unjust-sentence-for-Tokyo-Two/>>, accessed 7 June 2013.

'non-violence is non-negotiable. It is the cornerstone of Greenpeace's support and success for the last 37 years' and 'Greenpeace will continue to act to defend the whales in the Southern Ocean Whale Sanctuary, but will never attack or endanger the whalers'.⁸⁸

On its official website, Greenpeace states that its purpose is to protect the natural world by the vehicle of changing people's attitudes and acts and not through violence.⁸⁹ Accordingly, when making a judgement of a violent-like activity, consideration should apply to the specific context and take into account the purpose of the activity. Even so, it seems that drawing a line between violent and non-violent action has yet to achieve an official conclusion. However, no threatening actions are accepted or encouraged as part of any CSOs' action and implementation plans. For this reason, it can be confirmed that no CSO organisations or groups use violence to achieve their aims should be confirmed as the method of non-violence is a suitable and vital feature of a CSO. According to the practices of the international community, a commitment to non-violence is the most respected of the features which define NGOs.⁹⁰ Again, the point that should be underlined here is that the structure and dynamic aspects of a CSO in terms of their actual work and reality, rather than theory, are the criteria by which an organisation should be considered a CSO. For example, Greenpeace seems to have no intention of being proactive in terms of either attacking other subjects to achieve its goals or strengthening its position in the international community.

⁸⁸ Commentary on no peace with Greenpeace it seems, <<http://www.seashepherd.fr/news-and-media/editorial-080618-1.html>>, accessed 26 February 2013.

⁸⁹ About Greenpeace, <<http://www.greenpeace.org.uk/what-we-do>>, accessed 26 February 2013.

⁹⁰ Willetts, P., 'What is a non-governmental organization?' Output from the Research Project on Civil Society Networks in Global Governance, <<http://staff.city.au/CS—NTWKS-ART.HTM>>, accessed 2 April 2013.

Although some of the foregoing features of a CSO remain controversial points, the analysis made here seems sufficient to enable a conclusion that the definition in this section is suitable. Accordingly, a civil society organisation (CSO) is an independent and public-oriented organisation with common purposes of serving the public interest and providing a channel to pursue its goals in non-violent ways. Being given legal status will enable a CSO to work better but this is not a mandatory feature since a CSO sets its targets, makes its plans, implements its mission through its voluntary member network for non-profit purposes, and contributes to the development of such purposes. If an organisation fails to comply with these features, the organisation will not be recognised as a CSO in this thesis.

Each element of the CSOs under the proposed definition is not only to serve for the purpose of forming a CSO but also to enable CSOs to participate more effectively in the law-making process. For instance, the independence feature can make the view of CSOs more objective and, therefore, more persuasive to the legislators. Those group which are well-organised and have clear common purpose features can assist the process of collecting information, analysing and presenting the viewpoints of CSOs to the legislators as well as strengthening their impacts.

1.4.2 The Legal System and the Normative Acts System in Vietnam

Defining a legal system and its internal influences is crucial for legal research, especially in a thesis about legislation. Essentially, all legal systems have the same purpose of regulating and harmonising human activity in accordance with their perspectives and norms.⁹¹ However, since legal systems are constructed upon different cultures, different political systems and the lives of their people, the results differ. In order to recognise

⁹¹ Dainow, J., *The Civil Law and the Common Law: Some Points of Comparison*, American Journal of Comparative Law 15, No. 3 (1966): 419.

and classify a legal system, there are two methods which are frequently mentioned in legal science.

The first method refers closely to the deep roots of a legal system, which are based on social conditions⁹² and the philosophy of social acceptance. According to this approach, 'a legal system may be best considered a "union" of primary rules of obligation or duty and secondary rules of recognition, change and adjudication'.⁹³ The author of this method of understanding tends to analyse the notion of acceptance of social rule and distinguish general obedience from acceptance in order to highlight the necessity of creating voluntary acceptance by citizens. This method seems to be used more often in philosophy and policy research. In the day-to-day life of legal systems, its rule of recognition is very seldom expressly questioned.⁹⁴

The second method recognises a legal system in terms of legal communities and legal cultures.⁹⁵ In other words, a legal system is classified into a small number of families based on historical sources, systematic characteristics, political factors, and location.⁹⁶ Based on these criteria, the legal systems in the world are mainly divided into three main systems: the

⁹² Hart, H.L.A., *The Concept of Law* (2nd edn, New York: Oxford University Press, 1994): 119.

⁹³ Payne, M., *Hart's Concept of a Legal System*, *William and Mary Law Review* 18 (1976): 289.

⁹⁴ Hart, H.L.A., *The Concept of Law* (2nd edn, New York: Oxford University Press, 1994): 101.

⁹⁵ Hoecke, V. M. and Warrington, M., *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, *International and Comparative Law Quarterly* 47, No. 3 (1998): 495–536.

⁹⁶ Hyland, R., 'Comparative Law', in D. Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Blackwell, 1999): 190–195.

Civil Law system, the Common Law system, and the Islamic legal system.⁹⁷ Accordingly, the Civil Law system is the system of the codification of law whereby the basic regulations of society are based on written laws and the decisions of judges do not affect the law of the country. The Common Law system is the system of legal principles developed by judges in accordance with binding principles (precedents) and then applied to cases.⁹⁸ In a different way to Civil Law, when a court decides a particular case in the Common Law legal system, its decision not only establishes the law for the parties in the case but also applies to the same case in the future, although new problems bring new cases.⁹⁹ In others words, a number of laws are developed through practical jurisprudence.

However, from the nineteenth century, legislation in the UK and other countries in the Common Law system has become a more important additional source which is connected closely to the work of governments and other organisations.¹⁰⁰ The great majority of bills originate within those government departments which take most of the responsibility to regulate the basic social relations of citizens.¹⁰¹ The third type of legal system is the Islamic legal system. The Islamic legal system applies in Saudi Arabia and elsewhere. Generally, there is no distinction between the legal system and other moral controls on behaviour. The only means to regulate society is the

⁹⁷ United Nations Office on Drugs and Crime, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012): 9.

⁹⁸ Darbyshire, P., *Nutshells English Legal System* (8th edn, London: Sweet & Maxwell, 2010): 1.

⁹⁹ Dainow, J., *The Civil Law and the Common Law: Some Points of Comparison*, *American Journal of Comparative Law* 15, No. 3 (1966): 425.

¹⁰⁰ Lawrence, M.F., *Law Reform in Historical Perspective*, *St Louis University Law Journal* No.13 (1968): 351.

¹⁰¹ Zander, M., *The Law-making Process* (6th edn, New York: Cambridge Press, 2010): 2.

assumption that Islam, as a religion, provides all the answers to questions about appropriate behaviour and acceptable conduct.¹⁰²

Comparing the two methods in order to approach the 'legal system' term, the second method is more appropriate for this legal research than the first. The recognition of legal status as a small number of families based on historical sources is a systematic characteristic which has also been applied to most of the books referring to the legal system of a specific country. Therefore, this thesis adopts the second method in order to conduct its research on the legal system of two specific countries, which are the UK (Common law) and Vietnam (Civil law). Because the research is about the legislation in two countries and uses the tool of policy transfer, it is necessary to learn about and analyse the legal systems of Vietnam and the UK in order to lay a foundation for the research and facilitate the policy transfer process.

The first major legal system considered by the research of this thesis, in addition to the legal system of the UK, is the Vietnamese legal system and its Normative Act system. Because of historical factors, for nearly 100 years of domination, French colonialists rejected Vietnam's feudal laws and replaced them with a French legal system which was imposed on Vietnamese social life.¹⁰³ Therefore, Vietnam passively adopted the civil law system, and consequently current Vietnamese law exhibits typical features of this system which are similar to the French system in terms of its codification and related written legal documents.¹⁰⁴

¹⁰² United Nations Office on Drugs and Crime, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012): 9.

¹⁰³ Prof. Dr Dao Tri Uc, Basic information for legal research – a case study of Vietnam, <http://d-arch.ide.go.jp/idedp/IAL/IAL002300_008.pdf>, accessed 2 March 2013.

¹⁰⁴ Lene, D. and de Vries, H.P., *The French System – an introduction to Civil Law systems* (Oceana Publications, New York, 1958): 43–45.

The current Vietnamese legal system is mainly based on a system of codified legal documents. Before 26 December 2015, the system of codified legal documents was the only source of the legal system in Vietnam. Annually, the Justices' Council of the Supreme People's Court collected the decisions of judges in the Local and Supreme Courts in order to analyse new cases and the way in which these cases were judged. A Resolution was then issued. However, the Resolutions of the Justices' Council of the Supreme People's Court do not create precedents, they merely guide courts with their consistent application and interpretation of laws.¹⁰⁵ However, after 26 December 2015, Vietnam adopted precedent as the second source of the legal system. Resolution No. 03/2015/NQ-HDTP of the Justices' Council of the Supreme People's Court on the process for selecting, publishing, and adopting precedents has officially recognised the application of precedents in Vietnam. It has also provided clear criteria for the selection of a case, and the process of developing a case, so that it can be a precedent which can be applied to subsequent cases with similar issues or facts.¹⁰⁶ The recognition of precedent as the second source of the legal system is a significant change in recent legal theory in Vietnam. Moreover, the change has introduced greater similarity between the legal system of Vietnam and that of the UK, which makes the policy transfer process between Vietnam and the UK easier.

With regard to the current codified legal system in Vietnam, pursuant to the Vietnamese Constitution, the current legal system has been developed with seven components: (a) constitutional law; (b) administrative law; (c) civil law and civil procedural law; (d) economic and commercial law; (e) criminal law and criminal procedural law; (f) land law; and (g) other laws which govern

¹⁰⁵ Article 21, The Law on the Promulgation of Legal Documents of Vietnam No.80/2015/QH13, dated 22 June 2015.

¹⁰⁶ Resolution No. 03/2015/NQ-HDTP of the Justices' Council of the Supreme People's Court on the process for selecting, publishing, and adopting precedents, dated 28 October 2015, application date from 16 December 2015.

social affairs.¹⁰⁷ These components of the legal system govern social relations and provide a relatively complete legal framework for social transformation by a series of written legal documents which is known as ‘the Normative Act system’.

In principle, the Normative Act system consists of the fundamental written legal documents system in the country, which has the power to provide compulsory legal rules for citizens. These rules are enforced by state power mainly through judicial power. The authority, formats, sequence of steps, and procedures in the development and promulgation of any documents in the Normative Act system must be strictly observed pursuant to the Law on the Promulgation of Legal Documents.¹⁰⁸

In accordance with the Law on the Promulgation of Legal Documents, the Normative Act system in Vietnam can be represented as follows in Table 1.

Table 1. Normative Act system in Vietnam

Legal documents	Issuing institutions
Constitution	National Assembly
Laws	
Resolutions	
Ordinances	Standing Committee of National Assembly
Resolutions	

¹⁰⁷ Prof. Dr Dao Tri Uc, Basic information for legal research – a case study of Vietnam, <http://d-arch.ide.go.jp/idedp/IAL/IAL002300_008.pdf>, accessed 2 March 2013.

¹⁰⁸ Law on the Promulgation of Legal Documents No.80/2015/QH13, dated 22 June 2015.

Legal documents	Issuing institutions
Orders	President of Vietnam
Decisions	
Decrees	Government
Decisions	Prime Minister
Resolutions	Justices' Council of the Supreme People's Court
Circulars	Chief Justice of the Supreme People's Court, Supreme People's Procuracy
	Ministers and Heads of Ministry-equivalent Agencies
Decisions	State Auditor General
Joint resolutions	Standing Committee of the National Assembly, the Government, and the Presidium of Vietnam Fatherland Front
Joint circulars	Chief Justice of the Supreme People's Court and the President of the Supreme People's Procuracy
	Ministers, Heads of Ministry-equivalent Agencies, the Chief Justice of the Supreme People's Court, and the President of the Supreme People's Procuracy
Resolutions	People's Councils
Decisions	People's Committees

The Normative Act system as listed in Table 1 is considered the backbone of the legal system of Vietnam and affects the establishment and

working of CSOs in Vietnam in accordance with the function of each organisation. The Normative Act system is the system upon which this thesis is based in order to undertake research on the legislative process and development of the legal system in Vietnam. However, as the particular purposes and delimitation of the thesis are about the law-making process and the activity of CSOs, the legal documents from the National Assembly (consisting of the Constitution, laws, and resolutions), the Standing Committee of the National Assembly (consisting of ordinances and resolutions), the Government (consisting of decrees), and the Ministers or Heads of Ministry-equivalent Agencies (consisting of circulars) are referred to more frequently as the legal basis for the analysis and recommendations.

From 1 July 2016, the Normative Act system of the legal system in Vietnam will have certain changes in accordance with the amendment of the Law on the Promulgation of Legal Documents 2015.¹⁰⁹ One notable change is that the joint resolution between the Standing Committee of the National Assembly or the Government and the Central Committee of Socio-political Organisations will be changed to the joint resolution between the Standing Committee of the National Assembly or the Government and the Presidium of the Vietnamese Fatherland Front.¹¹⁰ This change will enhance the role of the Vietnamese Fatherland Front, the umbrella organisation of some important social organisations and social-political organisations,¹¹¹ with regard to monitoring and reviewing the implementation of public policy and with regard to the legislation in terms of the trends of legal and political activities in Vietnam.¹¹² The Normative Act system of Vietnam is the core of the legal

¹⁰⁹ The Law on the Promulgation of Legal Documents 2015 No.80/2015/QH13 dated 22 June 2015.

¹¹⁰ Ibid, Article 4.

¹¹¹ The structure and activities of the Vietnamese Fatherland Front are discussed in Chapter 2.

¹¹² Enhancing the role of the Vietnamese Fatherland Front with regard to monitoring and reviewing the implementation of public policy and with regard to the legislation,

system which the research will focus on. How to improve the quality and quantity of the Normative Act system and how to enhance the participation of the CSOs in the drafting process of the Normative Acts are two of the main points which the research will consider.

In accordance with the second method of defining the legal system, the legal system in the UK has all the typical features of a Common Law legal system. It consists of the legal system of England and Wales, the legal system of Scotland, and the legal system of Northern Ireland.¹¹³ The legal system is based on three main sources: (a) legislation (consisting of Acts made by or under the authority of Parliament and delegated legislation¹¹⁴), (b) European Union (EU) legislation and the European Convention on Human Rights, and (c) 'unwritten' law which consists of statutory interpretations, case law, and custom of equity.¹¹⁵ In this research, all of the sections about the law-making process, the contribution of CSOs to the legal system, and the lessons which Vietnam may learn from the UK to enhance the quality and quantity of legislation shall refer to these three sources and the nature of the UK legal system. As the result of the referendum to leave the EU of the UK on 23 June, 2016 has not implemented yet, the second source of legal system in the UK is still studied.

1.4.3 The Law-making Process

The law-making process is the process which converts the needs, values, and traditions of a society into regulations in legal documents in order to regulate social relations. Depending upon the legal system model, legal

<<http://noichinh.vn/nghien-cuu-trao-doi/201411/tang-cuong-vai-tro-giam-sat-phan-bien-xa-hoi-cua-mat-tran-to-quoc-viet-nam-296314/>>, accessed 3 December 2015.

¹¹³ The legal system of the UK,

<http://www.cilex.org.uk/about_cilex_lawyers/the_uk_legal_system.aspx>, accessed 9 May 2013.

¹¹⁴ Statutory Instrument Act 1946.

See also: Cabinet Office, Guide to Making Legislation (London, 2003) chap.16.

¹¹⁵ Ibid, 4.

tradition, and the form of government, the law-making process may differ. For example, in Vietnam, which has a government in the form of a republic, the law-making process is mainly based on the workings of the National Assembly with the participation of all members, who are selected by the citizens, and on the scrutiny of the government, the Ministry of Justice, and other related entities. In the UK, which has a government in the form of a constitutional monarchy, the law-making process includes the House of Commons, the House of Lords, and Royal Assent.¹¹⁶

Nowadays, the term 'the law-making process' not only refers to the legal drafting work in an independent country but also to the work of a region and the bodies in which a country participates. The European Union is an example. Law-making in the European Union is the result of interaction among the 'institutional triangle' of the Parliament, Council, and Commission¹¹⁷ in order to make binding legislative Acts which must be applied in their entirety across the EU.¹¹⁸

In general, law-making takes up a portion of the legislative process because this process is engaged in three core functions: checking the administration, providing political education for the public, and providing representation for several types of client age. In addition, there can be two other functions of legislature: the judicial function and the function of leadership selection.¹¹⁹ Accordingly, the connotation of the legislative process may refer not only to the law-making process itself but also to a wide

¹¹⁶ Making Laws, <<http://www.parliament.uk/about/how/laws>>, accessed 3 April 2013.

¹¹⁷ Law-making, <<http://www.chcs.org.uk/eu-law-making-process.htm>>, accessed 3 April 2013.

¹¹⁸ European Union, Regulations, Directives and other Acts, <http://europa.eu/about-eu/basic-information/decision-making/legal-acts/index_en.htm>, accessed 4 April 2013.

¹¹⁹ William J.K. and Morris S.O., *The American Legislative Process* (9th edn, New Jersey: Prentice-Hall, 1997): 18.

range of related factors such as legislative tasks, the electoral process, debates and decision-making, and political parties and their influence over the legislative process.¹²⁰ Therefore, in this research, the term ‘the law-making process’ is predominantly used.

An additional point to be noted is that although an Act may have completed its legislative process, it does not mean that it becomes effective at once in Vietnam and the UK. Commonly, in Vietnam, laws are documents which form basic regulations and the outline of proper behaviour for citizens of the country. However, the law merely draws the framework of the regulations and must be interpreted or given more detail by seventeen basic types of Normative Act which are listed in Section 1.4.2 of the thesis. The same situation can be found in the UK, where new administrative arrangements have to be made before an Act can be fully operational. In such cases, the legislation is effective when a commencement order is given in the form of a special type of statutory instrument. The Easter Act 1928 can be taken as an example to illustrate this point since it has still not been brought into force because of a lack of administrative arrangements to put it into practice.¹²¹ Therefore, the term ‘the law-making process’ in the research has its delimitation in terms of predominantly mentioning the process of making laws. The process of drafting and issuing the implementing documents for the laws in Vietnam and the UK is excluded in the connotation of the term ‘the law-making process’ in this thesis.

¹²⁰ The term ‘the legislative process’ is not defined by a concrete definition in a book. However, two books, *Making the Law – the Report of the Hansard Society Commission on the Legislative process* in the UK and *The American Legislative Process – Congress and the State* in the US, present not only the law-making process but also the legislative task, legislators and the electoral process, the debates and decision-making, and the political parties and their influence on the legislative process, etc.

¹²¹ Partington, M., *Introduction to the English Legal System 2012–2013* (Oxford: Oxford University Press, 2012): 45.

1.5 Methodologies

As aforementioned, the aims of this research are to investigate, systematise, and enhance the legislative process in Vietnam by enhancing the involvement of CSOs with regard to relevant experiences of the UK. Hence, the methods which are used in this research are the tools and techniques to achieve these aims. The selected methods are a combination of literature review, fieldwork, policy transfer, and case studies. Each method is now discussed with explanations of what the method is and why, how, and where it is used.

1.5.1 Literature review

The tasks of sciences, including legal science, are description, explanation, evaluation, and prediction. Therefore, a literature review, as one of the most common methods in the study of law, is used early on to interpret, clarify, and evaluate the content of valid legal norms; to systematise them; and to predict the development of these legal norms.¹²² Using a literature review, the thesis accesses a wide range of literature including the primary legal documents of the UK and Vietnam together with secondary sources such as books; journals; the publications of UN bodies, NGOs, CSOs, and other international and domestic organisations; official reports from the governments; popular newspapers; and other written sources which are recognised by the governments or the international community. The literature review not only concentrates on related works and Normative Acts but also the current context, thereby keeping the research updated to match the period in which the research is conducted.

In order to analyse the current situation in Vietnam, the main documentary sources are the Normative Acts; legal textbooks; certain

¹²² Aarnio, A., *Reason and Authority – a Treaty on the Dynamic Paradigm of Legal Dogmatics* (Cambridge: University Press, 1997) 68–75.

reputable legal journals in Vietnam such as the Legislation Journal of the National Assembly, the State and Law Journal of the Institute of State and Law, the Democracy and Law Journal of the Ministry of Justice, and the Legal Journal of the Ho Chi Minh University of Law; and articles from certain reliable newspapers which are often used as a source of information in national policy and legal debates such as the Tuoi Tre newspaper,¹²³ the Thanh Nien newspaper,¹²⁴ and the Sai Gon Giai Phong newspaper.¹²⁵ The articles which are published on the official portals and websites of the National Assembly, the government, the Ministries, and the state and local authorities are also taken into account as a literature source for the research. In addition, data from some CSOs and other social organisations such as the Vietnamese Lawyers' Association (VLA), the Women's Organisation, and Trade Union are used together with the literature resources of the Ho Chi Minh City University of Law which relate to law-making and the participation of the public in the law-making process.

Regarding literature related to the UK legislative process, the thesis refers often to the information and data produced by Parliament, the Cabinet, the relevant ministries, and CSOs in addition to the documentary sources from the library of the University of Leeds and online resources. Some main types of literature source related to the UK legislative process are textbooks, journals, websites, and articles. The author also spent time studying the practice of the law-making process and the involvement of the public in the law-making process in the UK by reviewing the reports in the library of professional experts and organisations.

There are limitations in the literature sources of some developing countries such as Vietnam which this thesis encountered. The main such

¹²³ www.tuoitre.vn.

¹²⁴ www.thanhvien.vn.

¹²⁵ www.sggp.org.vn.

limitation is the lack of availability.¹²⁶ The lack of availability is shown, firstly, by the lack of publicly accessible literature. For example, literature with data about legislation, democracy, and human rights is unavailable for public reading either in the library or from online resources. Secondly, as mentioned in Section 1.3, original, significant, and profound research which is publicly available about the law-making process, democracy, and human rights in Vietnam is rare because it is a new phenomenon in legal studies in many developing countries and Vietnam is not an exception. Moreover, the term 'CSO' is a new term in the social and legal fields. Hence, the definition of CSO has not yet fully crystallised. The limited number of legal journals in Vietnam compared with their availability in the UK is also a limitation which affects this research. In order to overcome the limitation of the literature sources, this thesis uses alternative sources which are closely related to CSOs, such as NGOs, professional associations, societies, and social and charity organisations in order to compare and uncover findings for CSOs. In addition, the researcher interviews in person members of the National Assembly, representatives of CSOs, and officers of the National Assembly and government offices as part of the fieldwork in order to collect related literature when possible.

Because the legal and political conditions of the two countries, Vietnam and the UK, differ, matching the ideas and content of the literature can present a challenge to the researcher. The problem can be solved by the transfer policy method, the guidance of supervisors, and the experience of the researcher. Moreover, in addition to a literature review, the researcher also conducts fieldwork and employs the case study method to gain a greater understanding of the issues and the literature before concluding the study.

1.5.2 Fieldwork

¹²⁶ Kenneth, D.B., *Methods of Social Research* (4th edn, New York: The Free Press, 1994): 297.

One of the main aims of the thesis is to formulate and propose measures proactively in order to enhance the process, and improve the quality, of legal documents in Vietnam and improve the Law on Normative Acts based on this framework. However, laws and legal issues have particular methods of interpretation because they are not social phenomena which can be understood by observation or impressionism. Accordingly, an empirical grounded examination must be added to most of the cases in order to achieve a full understanding about the legal issues in terms of systematic, general, theorised, and organised knowledge.¹²⁷ Therefore, the study includes fieldwork with qualitative research which attempts to explain and analyse the reasons why the participation of CSOs can help to improve the quality and quantity of laws. Fieldwork also enables the exploration of the inside views of those who are directly or indirectly involved in the law-making process in the context of the participation of CSOs in legislation. The result of the fieldwork, especially in Vietnam, is necessary because real-life settings enable the researcher to discover data about practices and values¹²⁸ which contribute to the originality of the research. In addition, qualitative research is suitable to use for generalisations about the basics of an individual case in order to contribute to scientific development. This is because qualitative research provides an understanding of context and process together with an understanding of what causes a phenomenon, thereby linking causes and outcomes, and fostering new hypotheses.¹²⁹

In the UK, as literature is more available, the scale and sampling of the fieldwork differs from the fieldwork in Vietnam. The fieldwork in the UK mainly focuses on the inside view of representatives of CSOs.

¹²⁷ Cotterrel, R., *Why must legal ideas be interpreted sociologically?*, *Journal of Law and Society* 25, No. 2 (1998): 5–15.

¹²⁸ William D.C., Marilyn B.B., and Lac, A., *Principles and Methods of Social Research* (3rd edn, New York: Routledge, 2015): 23.

¹²⁹ Denzin, N.K. and Lincoln, Y.S., *The SAGE Handbook of Qualitative Research* (4th edn, California: SAGE Publications, 2011): 304–314.

1.5.2.1 Sampling strategy

The first stage in laying the foundation for qualitative research is to define the population and size of sampling, and to determine the sampling strategy. For the particular purposes and targets of this research, the purposive sampling method is chosen because with this type of strategy, the number of participants is less important than the 'purpose' and criteria used to select them.¹³⁰ Moreover, purposive non-random sampling is a very effective way to develop an understanding of complex issues of human thinking and behaviour.¹³¹ Therefore, purposive sampling is a suitable strategy for the thesis because the fieldwork seeks to determine the views of members of the National Assembly, officers of the National Assembly and government offices, and representatives of CSOs regarding the participation of CSOs in the law-making processes in the context of legislative innovation in Vietnam. A purposive sampling strategy also allows researchers to make connections among experience and larger social and cultural structures.¹³²

Sampling was decided upon the criteria of diversity and relevance, and work experience with CSOs. There are three groups of participants for the fieldwork in Vietnam which are representative of the main three perspectives of the issue which the research is trying to analyse. These groups provide information and data as follows.

The members of the National Assembly in Vietnam provide their opinions about the current activities and position of the National Assembly as the highest organ of legislation where laws are discussed and enacted. They

¹³⁰ Ritchie, J. and Lewis, J., eds, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (SAGE Publications, 2003): 79.

¹³¹ Marshall, M.N., Sampling for qualitative research, *Family Practice* 13, No. 6 (1996): 523.

¹³² Denzin, N.K. and Lincoln, Y.S., *Strategies of Qualitative Inquiry* (California: SAGE Publications, 1998): xi.

express their points of view on how to enhance the quality and quantity of the law-making process, especially about whether admitting and encouraging the participation of CSOs in the process would assist. The members of the National Assembly also contribute their experience, views, and evaluations on the stage of the legislative process which is the most appropriate for CSOs to participate in, the factors which facilitate the participation of CSOs in the law-making process, and the actual participation of CSOs in legislation. Moreover, the members of the National Assembly propose improvements in the current process of the National Assembly which should be adopted in order to encourage the participation of CSOs in the law-making process, and recommend improvements that CSOs should take to improve their input to the law-making process.

The members of the management board of some CSOs in Vietnam provide facts about working schedules, human resources, and the capacity to take part in the law-making process. Furthermore, using inside analysis, representatives of the CSOs provide the research with specific successful and failed cases. These data are vital to develop the study's analysis, criticism, and proposals in order to enhance the participation of CSOs in the law-making process.

The officers of the National Assembly and government offices, in their capacity as practitioners who work directly with CSOs, explain why they recognise the participation of CSOs in the law-making process and how. In addition, the officers of the National Assembly and government offices act as a 'bridge' to connect the members of the National Assembly and the CSOs in the drafting stage of a Bill. Thus, they provide opinions on the activities of both sides. They also propose amendments to the laws and improvements in the pattern of cooperation which the National Assembly and the CSOs may consider adopting in order to enhance the involvement of the CSOs in the law-making process.

In the UK, there is more available literature than in Vietnam; thus, the fieldwork in the UK concentrates on the representatives of the CSOs in order to obtain their inside views on the extent to which a CSO can participate in the law-making process. The sampling of the fieldwork in the UK also differs from Vietnam. Accordingly, the fieldwork in the UK invites two categories of interviewee to participate. These include the representatives of CSOs and the expert officers of Parliament who have significant experience in the field of legislative drafting. The research does not follow a 1:1 pattern of comparison between Vietnam and the UK. The sampling of fieldwork in the UK is less than the sampling in Vietnam.

A qualitative sample is usually small because the type of information in qualitative research is meant to be rich in detail with each participant contributing a large amount of new evidence to the research.¹³³ This study proposes a population of twenty-nine with Vietnamese interviewees predominating (around two-thirds). The details of the population of the research are as follows in Table 2.

Table 2. The number of interviewees

Interviewee institutions	Number of interviewees
The National Assembly Members of Vietnam	8
Representatives of CSOs of Vietnam	8
Parliamentary and government officers in Vietnam	8
Representatives of CSOs of the UK	3
Parliamentary officers and experts in legislative drafting in the UK	2
Total	29

¹³³ Ritchie J. and Lewis, J. (eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: SAGE Publications, 2003): 83.

1.5.2.2 Research design

Based on the sampling, the fieldwork was designed mainly to take the format of face-to-face interviews. Interviews via telephone or video call could be used only in special instances when face-to-face meetings cannot be arranged. Although face-to-face interviews are time-consuming compared with telephone interviews, they better enable an interviewer to understand and explore the answers with richness and vividness.¹³⁴ Furthermore, in a face-to-face interview, the interviewer has the advantages of social cues such as voice, intonation, and body language in order to express the questions in a clearer manner. The interviewees can add extra information to the verbal answers more easily when needed, thereby improving the depth and detail of the answers.¹³⁵ Because of the advantage of visual cues, a face-to-face interview also reduces the distortion of information.¹³⁶ Thus, the interviews with all interviewees in Vietnam and in the UK were designed to be conducted in the form of face-to-face interviews. In order to achieve a high level of accuracy in such interviews, the interviewer asked interviewees for permission to record the interview. The recording enables the interviewer to check the precise original answers when the note taking becomes confused or when the interviewees give negative feedback about the accuracy of the comments based on their answers.

Since some of the research questions may be sensitive, the interviews may involve certain challenges or limitations. The five most common challenges which may affect the result are: (i) deliberate lying because the question is sensitive or the interviewee does not want to give a socially undesirable answer; (ii) unconscious mistakes when the interviewee believes

¹³⁴ Gillham B., *The Research Interview* (London: Continuum, 2000): 9–10.

¹³⁵ Opdenakker R., *Advantages and disadvantages of four interview techniques in qualitative research*, In *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research*, Vol. 7, No. 4. 2006: 4.

¹³⁶ Novick, G., *Is there a bias against telephone interviews in qualitative research?*, *Research in Nursing & Health* 31, No. 4 (2008): 397.

that he or she is giving an accurate response when he or she is not; (iii) accidental error when the interviewee misunderstands or misinterprets a question; (iv) memory failure when the interviewee does his or her best to remember but fails to recall completely or is unsure; and (v) the effect of emotion during the interview.¹³⁷ In order to overcome these limitations, the questions used in the interview were designed to be as clear and easy to understand as possible. Some terms which are new or unfamiliar to the Vietnamese interviewees (such as 'CSO' and 'lobbying') were explained in the question paper or verbally before the interview. Further, in order to ensure that the translation of questions into Vietnamese was correct and clear, before conducting the official fieldwork in Vietnam, the researcher conducted mock interviews with five interviewees to obtain their feedback. The interviewees in the mock interviews are in similar categories of work as the sample in the fieldwork. They are: a staff member of the Department of Justice in Ho Chi Minh City, a lawyer, the manager of a law firm, a lecturer at the University of Law in Ho Chi Minh City, and a chairman of the trade union in a local organisation. The feedback of the interviewees from the mock interviews reflected, to some extent, the response of persons who work in the legislative field and appropriate social organisations to the language of the questions. The language of the questions must be clear and univocal. The questions must also not be leading questions.

In addition, interviews should take place in a suitable location and at a suitable hour which can provide the interviewees with enough time to think carefully before providing answers. The location can be a private office or the working office of the interviewees as long as it is separate and maintains the privacy and confidentiality of the interview. The selection of the location can influence the interview answers because a suitable location normally contributes to the creation of a good mood and the willingness to answer an

¹³⁷ Kenneth, D.B., *Methods of Social Research* (4th edn, New York: The Free Press, 1994): 177–179.

interviewer.¹³⁸ Particularly when interviewees are organisations' managers and staff members, it is generally recommended that the location is outside the office. The interviewees may feel more able to share their perspectives which fall outside organisations' missions and goals and to provide experiences which are drawn from practice.¹³⁹ However, in Vietnam, interviewees who are civil servants or who have high positions in the political system prefer to be interviewed either by written papers or in their offices because this is more convenient and closer to regulation regarding the activity of officially delivering opinions to the public.¹⁴⁰ Therefore, in this study, the interviewer gave interviewees the option to choose the venues in which to conduct the interviews.

Qualitative interviews are usually classified according to three broad types: (a) informal and conversational; (b) topic-focused, and (c) semi-structured and open-ended.¹⁴¹ Taking into account the pros and cons of each type, this research adopts the semi-structured interview with open-ended questions because such an interview type enables the interviewer to be more flexible. This flexibility means that the interviewer can take the conversation away from the interview guidelines when necessary in order to encourage the interviewees to express themselves fully rather than respond to a predetermined list of questions.¹⁴² In addition, questions can be asked in order to pursue interesting leads.¹⁴³ Thus, the researcher is enabled to

¹³⁸ Sarah A.E. and Deborah G.M., "*Placing*" interviews: location and scales of power in qualitative research, *The Professional Geographer* 52, No. 4 (2000): 649–657.

¹³⁹ Ibid, 655.

¹⁴⁰ The Regulation on the official activity of delivering opinions and information to the public and the Press of the Prime Minister, No: 25/2013/QĐ-TTg, dated on 4 May 2013.

¹⁴¹ Dennis J.C. and Kumar, K., *The Collection, Analysis, and use of Monitoring and Evaluation Data* (Maryland: The Johns Hopkins University Press, 1992).

¹⁴² Semi-structured interview, <<http://www.qualres.org/HomeStru-3628.html>>, accessed 20 June 2013.

¹⁴³ Dennis J.C. and Kumar, K., *The Collection, Analysis, and use of Monitoring and Evaluation Data* (Maryland: The Johns Hopkins University Press, 1992): 13–14.

collect as much information, suggestions, and recommendations from the interviewees as possible. This study's interviews were designed in four parts as follows.

Part 1: Introducing background information about the research to the interviewees and taking the basic background information of the interviewees. Questions in this formal part are structured with closed questions.

Part 2: Interviewees express their general views and evaluations on the quality and quantity of the law-making process in Vietnam (or the UK). They also give factual information about the participation of CSOs and other social, professional associations in general in the law-making process. Questions in this part are semi-structured with relatively open questions.

Part 3: Interviewees suggest recommendations for creating a framework and encouraging the participation of CSOs in the law-making process in order to improve the quality and quantity of laws and Normative Acts in Vietnam. Questions in this part are semi-structured and interviewees are fully able to express their points of view.

Part 4: Concluding remarks. Interviewees make concluding remarks about issues within the research.

1.5.2.3 Ethics

Ethical issues are crucial factors which this study takes seriously into account because the research relates to people. 'Ethics' in social research can be understood as 'a set of principles that embody or exemplify what is good or right, or allow us to identify what is bad or wrong'.¹⁴⁴ Ethical terms establish the boundaries within which research achieves goals, pursues knowledge, respects human rights, avoids ethical conflict, and protects participants' interests. It is also the way in which researchers protect

¹⁴⁴ Hammersley, M. and Traianou, A., *Ethics in Qualitative Research*, (London: SAGE Publications, 2012): 16.

themselves from any legal consequences which may arise if interviewees break an agreement.¹⁴⁵

Among ten basic ethical issues which are regulated by the University of Leeds Research Ethics Committee,¹⁴⁶ the issues of obtaining informed consent, confidentiality, and data protection must be strictly applied. In order to achieve these goals, the current research strictly followed the guidance about ethical issues from the Council of the University of Leeds Research Ethics Committee, used a participant's consent form, and applied the Data Protection Code of the University. Interview participants were given full explanations about the research. Interviewees participated voluntarily and may freely withdraw from the interview at any time without any reason and without any negative consequences.¹⁴⁷ In order to make participation consensual, the explanation and the terms written in the consent form used lay terms so that all participants can fully understand the associated benefits and risks.¹⁴⁸ In all circumstances, the 'autonomy' or 'personal sovereignty' of the interviewees must be respected, such as the right to hold certain views,

¹⁴⁵ Mauthner M., Birch M., Jessop J., and Miller T., *Ethics in Qualitative Research* (London: SAGE Publications, 2005): 17.

¹⁴⁶ *The Guidance upon Ethical Issues of the Council of the University of Leeds Research Ethics Committee*, amended in 2012, indicates that the ten basic ethical issues are: (a) the balance of risk and benefit; (b) the physical and psychological health and safety of subject-participants; (c) obtaining informed consent and related questions; (d) inducement to participate in research; (e) particular arrangements for vulnerable subjects; (f) conflicts of interest; (g) confidentiality; (h) data protection; (i) intellectual property issues; and (j) monitoring and audit of research and research conduct.

¹⁴⁷ The Participant Consent Form, University Ethical Review, University of Leeds <http://researchsupport.leeds.ac.uk/index.php/academic_staff/good_practice/ethical_review_process/university_ethical_review-1>, accessed 17 March 2013.

¹⁴⁸ Guidance on Completing an Information Sheet, University Ethical Review, University of Leeds <http://researchsupport.leeds.ac.uk/index.php/academic_staff/good_practice/ethical_review_process/university_ethical_review-1>, accessed 17 March 2013.

to make certain choices, and to take actions based on personal values and beliefs.¹⁴⁹ In addition, if anything is said or has been said in an interview which could cause a risk of official adverse reaction for an interviewee, a warning is given before proceeding further.

Before conducting an interview, a participant was carefully informed that the routine of the interview follows a policy of non-disclosure of information and ensures confidentiality for the participant. Confidentiality must be protected from the interview to the data analysis and publishing stages. The data are kept confidential and must comply with the regulations of the UK Data Protection Act 1998 and the data protection principles. Personal data are not disclosed to third parties. Written and electronic documents related to an interview are stored securely in a computer system or specific places with locks and passwords. The interviews are only used for the research purpose.

As indicated in the prior paragraph, when adopting an ethical approach, the researcher must routinely follow a policy of non-disclosure of information and ensure confidentiality for participants.¹⁵⁰ Confidentiality must be protected from the interview to the data analysis and publishing stages. Furthermore, the researcher must undertake to keep data confidential and comply with the regulations of the UK Data Protection Act 1998 and the data protection principles. Personal data cannot be disclosed to third parties.¹⁵¹ Written and electronic documents related to the interview must be stored

¹⁴⁹ Hammersley, M. and Traianou, A., *Ethics in Qualitative Research* (London: SAGE Publications, 2012): 75.

¹⁵⁰ Noaks L. and Wincup E., *Criminological Research – Understanding Qualitative Methods* (London: SAGE Publications, 2004): 48.

¹⁵¹ *The Legal Affairs Policies of the University of Leeds* explains that a ‘third party’ in the context of a student’s research is anyone who is not member of the university’s staff,

<http://www.leeds.ac.uk/secretariat/documents/data_protection_faqs.pdf>, accessed 20 March 2013.

securely in a computer system or specific places with locks and passwords in accordance with the policy on safeguarding data and providing storage, backup, and encryption. The recorded file must be stored in Leeds University, specifically in the 'M' drive so that the researcher can use remote access (any desktop) if necessary rather than any portable device. Confidentiality and anonymity in qualitative research is one of the strict requirements which researchers must take into account. Social researchers must not only protect the identities of their sources, in the same way as journalists, they also need to protect the identities of the people, organisations, and places related to the collected data. Furthermore, social researchers must protect the privacy of research participants and protect them from harm.¹⁵² Therefore, researchers must code the information and data and present it under the code of the relevant participant. In this way, the confidentiality of participants is highly protected.

1.5.2.4 Data analysis

The data in this study were coded in accordance with the basic scheme of interview qualitative research in the following categories: Who said it? What was said? What is the relevance between the answer and the thesis questions? To whom is it relevant (Parliament, CSO, government or other subject)? How are the facts presented? What is the effect? What are the recommendations?¹⁵³

The data were collected and saved using Microsoft Word and Microsoft Excel on a computer with a password. Because the information which the research obtained from the participants does not contain much data in the form of numbers and does not require any specialist statistical

¹⁵² Hammersley, M. and Traianou, A., *Ethics in Qualitative Research* (London, SAGE Publications, 2012): 123.

¹⁵³ William D.C. and Marilyn B.B., *Principles and Methods of Social Research* (3rd edn, New York: Routledge, 2015): 256–263.

analysis tools, Microsoft Word was mainly used to transcribe the data. After obtaining the results of the fieldwork, the researcher determined whether the facts fit the initial hypothesis. If the data of the fieldwork supported the initial hypothesis of the research, the hypothesis was developed further. If the data of the fieldwork conflicted with the initial hypothesis, the researcher either redefined the phenomenon to exclude the case or reformulated the working hypothesis. Finally, the researcher gave significant consideration to the rule that research is about creating new knowledge; thus, the researcher maintained an open mind and did not predetermine the direction which the research would take. The outcome of the fieldwork was generalised based on the analysis and the hypothesis of the thesis in order to provide insightful views about the participation of the CSOs in the law-making process for Chapters 2, 3, 4, and 5.

1.5.3 Policy transfer

The policy transfer method is one of the vital social research methods in which social scientific analyses involve observations in more than one social system or in the same social system at more than one point in time.¹⁵⁴ Accordingly, policies, goals, structures and content, policy instruments or administrative techniques, institutions, ideologies, ideas, attitudes, and concepts in one country can be transferred to another country¹⁵⁵ as long as they satisfy some basic prerequisites. These include whether they are voluntary and without particular politics, economics, or other pressures; whether the domestic factors are not independently responsible for the policy action; and whether policymakers are aware of policy adoptions and overseas evidence is utilised within domestic policy debates.¹⁵⁶ In the context of globalisation, comparisons and lesson drawing are vital factors of the

¹⁵⁴ Warwick, D.P. and Osherson, S., *Comparative Research Methods* (New Jersey: Prentice-Hall, 1973): 8.

¹⁵⁵ Dolowitz D. and Marsh D., *Who learns what from whom: a review of the policy transfer literature*, *Political Studies* 44, No. 2 (1996): 344.

¹⁵⁶ Stone, D., *Learning lessons and transferring policy across time, space and disciplines*, *Politics* 19, No. 1 (1999): 51–59.

policy transfer trend of legal and political studies. Comparison is considered one of the most reliable procedures to screen domestic law for misstatements of rules or contradictions between rules and principles; and in order to understand one legal system and its possible deficiencies or reasonableness, legal researchers may look at other systems.¹⁵⁷ The comparative method in legal research is also designed to enable researchers to take cognisance of the similarities and differences of the selected legal systems in order to gain further knowledge.¹⁵⁸ Therefore, in this research, where the main aim is to investigate, systematise, and enhance the legislative process in Vietnam by enhancing the involvement of CSOs with lessons learned from relevant experiences in the UK, the comparative method is appropriate. However, because of the Parliamentary and government structures, the regulation of legislation differs between the two countries; thus, the thesis will not apply the 1:1 comparison pattern. Instead, the comparison is conducted on specific areas of the law-making process in accordance with the content of each chapter.

In the cross-cultural context of Vietnam and the UK, nevertheless, research encountered four basic problems which may arise in comparative analysis: conceptual equivalence, equivalence of measurement, linguistic equivalence, and sampling.¹⁵⁹ In order to minimise the negative effect of these problems, the researcher placed all concepts which did not have equivalent terms in international legal documents into the social-legal context in Vietnam and the UK when making translations so as to find the equivalent concept. For example, the group of officers who take charge of drafting a bill

¹⁵⁷ Gordley, J., *Is Comparative Law a Distinct Discipline?* *The American Journal of Comparative Law* 46, No. 4 (1998): 607–615.

¹⁵⁸ Venter, F. et al., *Regsnavorsing – Metode enPublikasie* (Juta 1990): 206–244, translated version by Prof. T.J. Scott, Professor of Private Law, University of Pretoria.

¹⁵⁹ Warwick, D.P. and Osherson, S., *Comparative Research Methods* (New Jersey: Prentice Hall, 1973): 11.

in Vietnam is called ‘the drafting board’¹⁶⁰ or sometimes ‘the drafting committee’. Placing the term ‘drafting board’ or ‘drafting committee’ into the context and process of law-making, its equivalent is the ‘bill team’ in the law-making process of the UK.

In the research, the legal system and practices of the UK were chosen to be the object of comparison for several reasons. Firstly, the UK has a typical system of Common Law with a long history of development and stability.¹⁶¹ Consequently, the legal system contains many factual cases, doctrines, and experiences which can provide both factual and academic lessons for other countries. Secondly, the UK has profound academic legal literature sources from world-class research institutes. These sources include research papers, textbooks, legal journals, legal reports, and online resources, based on which the research can undertake an in-depth and well-supported academic analysis of the research questions. These experiences and lessons are appropriate to Vietnam as a developing country and one that is on its own path to develop legal regulation. Thirdly, as shown in the analysis in Section 1.4.2, the border between the Civil Law system and Common Law system is not an inflexible border, and Vietnam currently seems keen to learn more about the Common Law system in order to improve its own legal system. In this context, the UK could be an appropriate example.

However, the two systems of Vietnam and the UK are not similar in all aspects; for example with regard to history, the category of the legal system, the social conditions, and the political basis. Thus, in order to make the research transferable, the thesis adopts the method of policy transfer and takes into account other specific conditions of Vietnam as follows. Firstly, the research does not apply a fully comparative approach with each feature examined equally; instead, it uses selective comparison, focusing on the

¹⁶⁰ Article 52, Law on the Promulgation of Legal Documents of Vietnam, No.80/2015/QH13, dated 22 June 2015.

¹⁶¹ Darbyshire P., *Nutshells English Legal System* (8th edn, London: Sweet & Maxwell, 2010): 2.

legal and democratic basics, the practical application of democracy, and the legal rationale of encouraging the participation of CSOs in the law-making process. Secondly, the research seeks to identify and classify the issue and process of change rather than merely to explain the fact or make a measurement of the fact¹⁶² of the UK. As such, the relevant authorities in Vietnam can have a clearer and critical view of the matter and may find it easier to make a decision on how, where, and when to apply any change. In the context of lessons learned from another system, which are a requirement of policy transfer, the research must also reflect its understanding within the circumstances of the relationship between structure and agencies. In addition, the impact which changes in society, the legal system, and the law-making process may have, and the effect of the nature of the transfer process itself, are assessed.¹⁶³ In particular, the research analyses some successful case studies of legislation about the involvement of the public and CSOs in the law-making process. The purpose of such involvement is to improve the quality of legislation and make the law more necessary, coherent, effective, and accessible from the perspective of the 'Good Law' project in the UK.¹⁶⁴ The information can provide useful lessons to Vietnam in the current situation and underpin the proposals at the macro level.

1.5.4 Case study

Case study is a social research method which has many advantages for answering the questions 'how' and 'why' related to a specific issue.¹⁶⁵ Therefore, the case study approach is a significant addition to the comparison of the participation of CSOs in the law-making process between Vietnam and the UK. One of the most common problems of the case study

¹⁶² Evans M. and Jonathan D., *Understanding policy transfer: a multi-level, multi-disciplinary perspective*, *Public Administration* 77, No. 2 (1999): 361–385.

¹⁶³ *Ibid*, 373.

¹⁶⁴ Good law, < <https://www.gov.uk/good-law>>, accessed 10 May 2013.

¹⁶⁵ Yin, R.K., *Case Study Research – Design and Methods* (California: SAGE Publications, 1984): 13.

method is the difficulty in selecting the case and generalising the findings to 'theory'.¹⁶⁶ The research selects two cases of the law-making process from the laws regarding political rights and social rights in the two countries. These cases reflect the diverse aspects of the legislation and the participation of the CSOs in the process. Amongst the rights which people can obtain from authority, political and social rights are those which affect the mass population and have strong impacts on lives not only in the present but also in the future. Therefore, the participation of the public and organisations which represent the diverse groups within the populations in each country is important in order to create laws 'from the people', 'by the people', and 'for the people', in accordance with the declaration in the constitution of Vietnam.¹⁶⁷

In Chapter 4, two cases in the field of political rights in Vietnam and the UK are analysed. They relate to the Access to Information Law and the Freedom of Information Act 2000. Freedom of information, including freedom of access to information, is a vital political right of people and one of the important channels whereby democracy can be achieved. These two case studies contribute a valuable source of information and analysis about the experience of the UK in drafting the Freedom of Information Act with the contribution of CSOs and of Vietnam in the process of drafting the Access to Information Law. In Chapter 5, two cases regarding social rights in the UK and Vietnam are analysed. These are the Law on Medical Examination and Treatment 2009 and the Health and Social Care Act 2012. Health care regulation and the NHS system are proud features of the UK and reflect the rich experience of the UK in the process of developing them. The experience of the UK in the law-making process in the social rights field can offer good practices and lessons for Vietnam.

The case studies in Chapters 4 and 5 are distinctive because drafting and passing a law in the political rights field can be a contrary undertaking for

¹⁶⁶ Ibid, 39.

¹⁶⁷ Article 2, Vietnam Constitution 2013, dated 28 November 2013.

the state because the laws on political rights can be tools to control the power of the state. By contrast, drafting a law extending social rights for citizens can be more appealing to a state built on collective ideals. The comparison between the legislative processes of the two Acts in the two fields also answers some basic sub-questions of the thesis such as the following: Do the public and CSOs enjoy the same levels of facilitation and recognition from the respective Parliaments which enable them to participate in the legislative process? Do the Bills in the political and social rights areas receive the same attention and contributions from the public and CSOs? If not, to which regulatory field do people pay more concern? What is the role of CSOs in the legislative process? To what extent can CSOs have an impact on the process of making laws?

In the case study chapters, the similarities and differences between Vietnam and the UK were analysed from the viewpoint of successful and failed reasons from both countries. The comparison in this part provided the factual and rational basis to make a proposal for a programme of reform of the law-making process and the enhancement of the position of CSOs in the legislation in the latter part of the thesis. The case study method in the thesis was designed in accordance with the pattern for multiple cases; thus, the findings are more complex than the single case pattern. A case study requires more resources and time. Moreover, multiple cases can produce multiple experiments and diverse findings;¹⁶⁸ therefore, it requires more effort to systematise the findings. Essentially, a case study collects evidence through six sources: documentation (i.e. legal documents, administrative documents, progress reports, agendas, announcements and minutes of meetings, letters, memoranda, and articles in the mass media); archival records (i.e. organisational records, maps and charts, and survey data); interviews; direct observation; participant observation; and physical artefacts.¹⁶⁹ The research collects evidence through three main sources,

¹⁶⁸ Yin, R.K., *Case Study Research – Design and Methods* (California: SAGE Publications, 1984): 48.

¹⁶⁹ *Ibid*, 78–89.

which are documentation, archival records and interview through fieldwork. This means all documents in the Normative Acts system in Vietnam and all types of official document in the law-making process in the UK, such as the Bills, reports of both the Houses and Committees, Regulations, and Orders, are taken into consideration and scrutinised.

In social empirical research, the result may be biased, depending upon the purpose of an investigation and the way in which the authors determine which and how many parts of the results are published and what questions are asked.¹⁷⁰ However, since bias is an unavoidable phenomenon of social study, this current research maintains a neutral point of view regarding the literature; for instance, primary documents rather than secondary documents are prioritised.¹⁷¹ Further, the use of multiple sources helps the researcher to obtain a reasonably grounded view.¹⁷² In addition, the thesis tries to present the sources and the points of view in the most transparent method possible rather than claiming the avoidance of bias.

1.6 Outline of the thesis

The thesis is in six chapters. The content of each chapter is as follows.

¹⁷⁰ Hoyle, C., 'Ethical and methodological issues in researching domestic violence', in King, R.D., and Wincup E., (eds), *Doing Research on Crime and Justice* (New York: Oxford University Press, 2000): 17.

¹⁷¹ Mogalakwe M., 'The documentary research method – using documentary sources in social research', *Eastern Africa Social Science Research Review* 25, No. 1 (2009): 43–58 explains that 'the primary documents refer to eyewitness accounts produced by people who experienced a particular event or the behaviour we want to study. The secondary documents are documents produced by people who were not present at the scene but who received eyewitness accounts to compile the documents or have read eyewitness accounts.

¹⁷² Thurmond, V.A., *The point of triangulation*, *Journal of Nursing Scholarship* 33, No. 3 (2004): 253–258.

Chapter 1. The thesis presents a general view of the research, the main thesis questions, the targets, and the methods used to achieve the goals. Chapter 1 also explains the delimitation and proposes the definitions for some terms which are still controversial or have yet to be defined in scholarly research.

Chapter 2. The thesis analyses the legislative process and its values, which consist of the values of Efficiency and Effectiveness, Fairness, Democracy, and Participation. Chapter 2 also presents the concrete concept of CSOs in both countries. Identifying the concept of CSOs makes the content of the thesis consistent and contributes to the understanding about CSOs in Vietnam with reference to the UK. The analysis of the values of legislation and the concept of CSOs in Chapter 2 is the important source of the legal basis for the case studies of Chapters 4 and 5.

Chapter 3. This chapter provides the dynamic aspects of the participation of CSOs in the law-making process, especially undertakes a critical view of the current context of law-making in Vietnam and the UK and the potential impact of CSOs on the law-making process from the pre-legislative stage to the post-legislative stage. This analysis includes direct participation such as submitting a proposal to representatives or Members of Parliament, and lobbying the legislators, and indirect participation such as online discussions and petitions. The content of Chapter 3 provides background information for the case studies of Chapters 4 and 5 and for the conclusion.

Chapter 4. This chapter presents two case studies on the law-making process which affects the political rights of citizens in the two countries: the Law on Access to Information of Vietnam and the Freedom of Information Act 2012 of the UK. In accordance with the analysis in Section 1.5.4, the case studies in Chapter 4 are an expansion and reflection of the analyses in Chapters 1, 2, and 3 through the specific cases.

Chapter 5. This chapter continues to analyse the actual role of CSOs, including their direct participation and indirect participation, in law-making in the social rights field. The Law on Medical Examination and Treatment 2009 of Vietnam and the Health and Social Care Act 2012 of the UK are examined as case studies. Since the cases regarding the social rights and those regarding the political rights of people are distinctive, the case studies in Chapter 5 provide further scrutiny of the actual opportunities for CSOs to participate in the law-making process.

Chapter 6. A conclusion and a proposal to enhance the participation of CSOs in the law-making process in Vietnam, based on the analysis of the theory, the results of the fieldwork, and the policy transfer from the UK, are the fundamental content of Chapter 6. This chapter also concludes the thesis with overall final remarks.

CHAPTER 2: THE VALUES OF THE LAW-MAKING PROCESS AND THE CONCEPT OF CIVIL SOCIETY ORGANISATIONS IN VIETNAM WITH REFERENCE TO THE UK

2.1 Introduction

Concentrating on providing the background and concepts of the thesis, Chapter 2 continues to lay a foundation for the thesis about the law-making process and the potential impact of CSOs on this process, Chapter 2 analyses legislative values and its role in the entire process of legislation in Vietnam and the UK from the pre-legislative stage to the post-legislative stage. Accordingly, four primary values of the law-making process, which are effectiveness and efficiency, fairness, democracy, and participation are focused in Chapter 2.

In addition, one of the crucial tasks of the thesis is to determine the concept of CSOs in Vietnam in comparison to UK. The concrete concept of CSOs in both countries contributes to answer the questions of the thesis about why the participation of CSOs in the law-making process is important and how to encourage CSOs to participate in the law-making process. Identifying the concept of CSOs also makes the content of the thesis consistent and contributes to the understanding of CSOs in Vietnam with reference to the UK.

2.2 The values of the legislative process and the potential impact on the law-making process

The legislative process is a complex and special process because its outcomes affect the lives of large groups of people. The result of legislation can either confer rights or impose obligations on millions of people. In order to create high quality substantive law which is understandable, clear, coherent, effective, and accessible, certain fundamental principles and

values should be adopted. However, in legal training, legal research, and practice, legislators and researchers mainly focus on the principles of legislation rather than the values. For example, in the Law on the Promulgation of Legal Documents of Vietnam,¹⁷³ Article 5 of the law provides the principles of drafting laws. These principles include ensuring the constitutionality, legality, and consistency of legal documents in the legal system; complying with the prescribed authority, formats, sequence of steps, and procedures in the development and promulgation of legal documents; ensuring the feasibility of legal documents; and causing no difficulties or obstacles to the implementation of international treaties of which the Socialist Republic of Vietnam is a member.¹⁷⁴ However, there is no provision for substantive legislative values.

The principles and values of the law-making process are sometimes merged as principles because the aims of the principles and values of legislation can overlap and thereby both seek to enhance the quality and quantity of legal documents, especially the laws; make the laws easier to apply; and ensure that the legal system becomes more consistent. Principles and values, though, are different. Principles command action and enable judgment with deontological character, whereas values recommend actions which are worthy and teleological to pursue.¹⁷⁵ For instance, the principles of drafting law in Article 5 of The Law on the Promulgation of Legal Documents of Vietnam highlight the duties of the legislators to make the law clear, applicable, and consistent with other domestic and international legal documents. However, some of the substantive factors which make the law-making process more effective, and the values of the country such as democracy and fairness, are not fully reflected in the principles of legislation.

¹⁷³ The Law on the Promulgation of Legal Documents of Vietnam No. 80/2015/QH13, dated 22 June 2015.

¹⁷⁴ *Ibid*, Article 5.

¹⁷⁵ Williams, A., *The Ethos of Europe: Values, Law and Justice in the EU* (Cambridge: University Press, 2010): 257.

See also: Habermas, J., *Between Facts and Norms* (Cambridge: Polity Press, 1997): 255.

Therefore, Chapter 2 aims to make an in-depth analysis of the legislative process, to suggest the values of the law-making process as well as to analyse the contribution of the values to the improvement of legislation. Some values of the law-making process are proposed based on the characteristics of the process together with the national and legal system values which Vietnam and the UK recognise and respect. The national and legal system values of a country are generally recognised in its constitution. For example, Articles 2, 3, 4, 5, 6, 7, and 8 of the Vietnam Constitution 2013 recognise some of the values which the country and the legal system must respect such as democracy, fairness, respect for human rights and citizens' rights, and the right to participate in deciding the important matters of the country. In the UK, although there is no official written constitution, some basic values of the country were recognised in documents such as The Bill of Rights 1689 and the Human Rights Act 1998. In the Bill of Rights 1689, for instance, the right of free election, freedom of speech, and debate were recognised. Other human rights which are guaranteed under the European Convention on Human Rights are confirmed within the UK in the Human Rights Act 1998. These rights include freedom of expression; freedom of thought, conscience, and religion; the right to life; the right to liberty and security; the right to a fair trial; freedom of assembly and association; the protection of property; the right to free elections; and the right to education.¹⁷⁶ On this basis and taking into account the elements which can enhance the quality of law that will be presented in section 2.2.1, four values of the law-making process are proposed and analysed in Chapter 2 of this thesis. They are efficiency and effectiveness, fairness, participation, and democracy. Adopting these values in the law-making process enhances the quality and quantity of laws.

2.2.1 Efficiency and effectiveness

Efficiency and effectiveness are dual values which are often referred to in social science enterprises. Generally, efficiency is associated with the relation between the accuracy and completeness of achieving certain goals

¹⁷⁶ Schedule 1 of Human Rights Act 1998.

and the resources expended in achieving them. In most cases, the time and cost to complete a task are used as the primary indicators of efficiency. However, effectiveness focuses on the accuracy and completeness of achieving the goals with the desired indicators.¹⁷⁷ In political and legal contexts, effectiveness includes the ability of the powerful to achieve their aims because of the quality of performance which the government can secure for its citizens or subordinates so that they can act in accordance with the wishes of the government.¹⁷⁸

In some research, especially in business, the relation between efficiency and effectiveness is considered a 'competition' because of the conflict between so-called instant benefits (efficiency) and sustainable growth (effectiveness) with regard to strategy and value. Therefore, one of two factors is sometimes neglected in order to maximise the value of the counterpart.¹⁷⁹ However, in the law-making process, efficiency and effectiveness have an essentially mutual interaction and become a value of the process to create high quality and timely laws.¹⁸⁰ The basic expression of such effort is the attempt to balance the 'cost' and 'benefit' of legislative action.¹⁸¹ Accordingly, the 'cost' is not only the direct financial consequences but also non-material elements which include psychological and emotional inconvenience, and legislative negative effects. The 'benefit' takes into account the outcomes of the legislation from which the goals to establish the social and political order come and thereby ensures the achievement of good

¹⁷⁷ Frokjær, E., Mertzum, M., and Hornbæk, K., Measuring usability: are effectiveness, efficiency, and satisfaction really correlated? Proceedings of the SIGCHI conference on human factors in computing systems, ACM, 2000: 345–347.

¹⁷⁸ Beetham, D., *Political Legitimacy* (Oxford: Blackwell, 2001): 32–33.

¹⁷⁹ Mouzas, S., *Efficiency versus effectiveness in business networks*, Journal of Business Research 59, No. 10 (2006): 1124–1132.

¹⁸⁰ Muylle, K., *Improving the effectiveness of parliamentary legislative procedures*, Statute Law Review 24, No. 3 (2003): 172.

¹⁸¹ Mader, L., *Evaluating the effects: a contribution to the quality of legislation*, Statute Law Review 22, No. 2 (2001): 126–128.

living conditions for people. The value of efficiency is ensured when the benefit outweighs the cost of the legislative process.

The value is measured, firstly, by the substantive quality of legislation. This is recognised differently in different countries. However, the quality of legislation is often associated with the criteria of comprehension, necessity, accuracy, and feasibility to implement.¹⁸² A law, or legal document in general, is not efficient and effective if it is vague, conflicting, inaccurate, and under or over-regulated.¹⁸³ The Good Law Project in the UK seeks to concretise the values of efficiency and effectiveness in legislation. Accordingly, a good law is defined as a law which is clear, necessary, coherent, effective, and accessible.¹⁸⁴ However, the meaning is different from country to country and the efficiency value is sometimes challenged. Even in developed countries such as the UK, people sometimes find that it is hard to comprehend legislation. The volumes of statutes and regulations, their structures and levels of detail, the frequent amendments, and even the English writing style are sometimes too complicated to understand.¹⁸⁵

Secondly, value is also measured by the time taken to complete the task of legislation. There is no common denominator of the 'correct' time. The time to complete the task depends upon the degree of urgency of legal documents, the capacity of the legislature, and the particular model of legislation. However, in order to control the progress of the legislative process, each country can set a general time frame for the process. The time

¹⁸² Donelan, E., *European approaches to improving access to and managing the stock of legislation*, *Statute Law Review* 30, No. 3 (2009): 18–20.

¹⁸³ Xanthaki, H., *The problem of quality in EU legislation: what on earth is really wrong?*, *Common Market Law Review*, No.38 (2001): 2.

¹⁸⁴ Cabinet Office/Good Law,

<<https://www.gov.uk/government/organisations/cabinet-office>>, accessed 21 May 2013.

¹⁸⁵ Good Law, the challenge, <<https://www.gov.uk/good-law>>, accessed 21 May 2013.

frame is a basis for evaluating the efficiency and effectiveness of the law-making process. For example, in Vietnam, the basic time frame for the law-making process from the draft submission stage to the stage of approval and the announcement of laws is defined by law as follows in Table 2.1.¹⁸⁶

Table 2.1: Time frame for the law-making process from the draft submission stage to the stage of approval and the announcement of laws

Actions/Activities	Time frame
Agencies, organisations or National Assembly members submit the draft laws	At least forty days before the opening date of the session for comments
Assessment of draft laws by the Ministry of Justice	Within a maximum of twenty days from the date on which full sets of documentation submitted for assessment are received
Verification of draft laws by the Standing Committee of the National Assembly	Twenty days before the opening date of the Standing Committee's session
Review of the draft laws and comments by the Standing Committee of the National Assembly	Within a maximum of seven days before the opening date of the Standing Committee's session
Consideration and approval of proposed draft laws by the National Assembly	No later than twenty days before the commencement of the National Assembly session

¹⁸⁶ Article 34 to Article 57 of the Law on the Promulgation of Legal Documents No. 17/2008/QH12, dated 3 June 2008. From 1 July 2016, the time frame for the law-making process from the draft submission stage to the stage of approval and announcement of a law will be regulated by Article 57 to Article 80 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015 with the same time frame.

Actions/Activities	Time frame
Delegations of National Assembly members, the Permanent Part of the Ethnicity Council, and the Permanent Parts of the National Assembly Committees are responsible for organising discussions and the input of comments in writing, the results of which are sent to the Office of the National Assembly	No later than twenty days before the commencement of the National Assembly session
Complete sets of documentation for draft laws shall be sent to the National Assembly	
Meeting session of the National Assembly to consider and approve the draft laws	Time frame is unspecified in the law
The date of passing a bill to be law	At the same date on which the National Assembly approve the law by a majority vote
Law announced by the President of the State and comes into force	No later than fifteen days since the date on which the laws were passed

According to the time frame of the law-making process in Table 2.1, at least 142 days (approximately equal to four and a half months) are required for the law-making process. The values of efficiency and effectiveness are reflected through the effort of the legislator not only to meet the schedule within the time frame but also to shorten the time of completing the task.

Given that the values of efficiency and effectiveness contribute to the enhancement of the law-making process, they should be reflected in the

legislative process of all countries. For instance, the Cardiff European Council has also confirmed the necessity of this value in the legislative process in order to gain the public's trust. In this regard, the Cardiff European Council uses the following slogan, 'Legislate less to act better'.¹⁸⁷ Accordingly, the legislation should be improved in terms of the draft quality and a reduction in the time for completion through a reduction in the number of legislative proposals and the improvement of consultation procedures. In order to enhance the value of efficiency and improve the quality of legislation, a number of actions should be taken. The legislators should work more effectively to investigate a bill and to collect the comments, reports, and factual information from a wider range of voters and experts. Moreover, people should be encouraged to participate in the legislative process by effective mechanisms. In addition, the time for debating, scrutinising, and ratifying in plenary should be ensured and increased rather than taking action by just modifying the text or undertaking something technical.¹⁸⁸

2.2.2 Fairness

The value of fairness, which is a part of human dignity, is one of the most basic values of humanity in the world because all people are born 'free and equal in dignity and rights'.¹⁸⁹ Human dignity was early recognised in the preamble of the United Nations Charter¹⁹⁰ and the preamble to the Universal

¹⁸⁷ 'Legislate less to act better: the facts', <http://europa.eu/rapid/press-release_IP-98-474_en.htm>, accessed 20 July 2013.

¹⁸⁸ Nguyen Van An, Chairman of Vietnam National Assembly, 'Reform the legislative process in Vietnam', <http://www.na.gov.vn/Sach_QH/QHVN_ly_luan_va_thuc%20tien/Chuong3/7.htm>, accessed on 22 May 2013.

¹⁸⁹ Article 1, The Universal Declaration on Human Rights, 217 A (III) (10 December 1948).

¹⁹⁰ Preamble of the Charter of the United Nations, 1 UNTS XV (24 October 1945): 'Reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.

Declaration on Human Rights.¹⁹¹ It was connected closely to human rights in order to confer the rights on people. Human dignity includes the right to be free of inhuman or degrading treatment, the right to respect for private and family life, the right to freedom of conscience and belief, the right to freedom of association, the right to marry and found a family, and the right to be free of discriminatory treatment.¹⁹²

Among these rights which are linked to human dignity, the right to freedom of association contributes to the value of fairness in protecting the dignity of human individuals and the dignity of collective action. The value of fairness arises 'when free persons, who have no authority over one another, are engaging in a joint activity and amongst themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens'.¹⁹³ Therefore, fairness brings a relevant value to both legislation and the development of society. It not only affects ethical or social objectives in legislation but should also affect the quality of the legislative process itself.¹⁹⁴ Fairness is not an equal social phenomenon in all societies but comes from the efforts of the authorities and all people to be fair and honest, and the effort to give opportunities for representation and the participation of the public in the law-making process.¹⁹⁵

¹⁹¹ The preamble of the Universal Declaration of Human Rights of the United Nations 1948 provides that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world',
< <http://www.un.org/en/documents/udhr/>>, accessed 23 July 2013.

¹⁹² Feldman, D., *Civil Liberties and Human Rights in England and Wales* (2nd edn, Oxford: Clarendon Press, 2002): 123–125.

¹⁹³ Rawls, J., *Justice as fairness*, *Philosophical Review* 67, No. 2 (1958): 178.

¹⁹⁴ Trinder, E., Hay, A., Dignan, J., Else, P., and Skorupski, J., *Concepts of equity, fairness, and justice in British transport legislation, 1960–88*, *Environment and Planning C: Government and Policy* 9, No. 1 (1991): 31–50.

¹⁹⁵ Tyler, T.R., *What is procedural justice? Criteria used by citizens to assess the fairness of legal procedures*, *Law and Society Review* 22 (1988): 103–135.

Although equality often linked to fairness and sometimes is considered as criteria to evaluate the fairness of democracy, fairness also has other substantive aspects. These especially include conferring the right to have one's voice heard in matters which touch one's interests¹⁹⁶ by participation in the policy and law-making process. Generally, fairness in participation in the law-making process expresses its value through two aspects: fairness in the electoral process and fairness of participation in a constituted legislature.

Fairness in the electoral process is the first and basic step by which people who are eligible to vote in accordance with the law of a country can practice their rights to select their representative in Parliament. Therefore, fairness in the electoral process can be considered the first step which people make regarding their involvement in the activities of Parliament. Voters have the right to make their voices heard and implemented through the representatives they elect. Fairness in elections is recognised in the European Convention of Human Rights in that free elections must be undertaken at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature.¹⁹⁷ Article 3 of the Protocol refers to both the 'passive aspect' of the right (the right to stand for election) and the 'active aspect' of the right (the right to vote in an election). Fairness, therefore, implies an obligation on the state to ensure free expression of the opinion of the people to choose the legislators and confers the opportunity on individuals to be able to control their lives through the assurance that the regulations which affect their lives are considered by those they have elected.¹⁹⁸

¹⁹⁶ Feldman, D., *Civil Liberties and Human Rights in England and Wales*, (2nd edn, Oxford: Clarendon Press, 2002): 125–128.

¹⁹⁷ Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

¹⁹⁸ Human Rights Review 2012 of the Equality and Human Rights Commission,

In order to implement the value of fairness in the legislative process, each country must pay continuous attention. For example, in the UK, before 1832, only a minority of British men could vote, while women were totally disenfranchised. In 1832, the Representation of the People Act (the Great Reform Act) extended the right to vote, but the voting right was still dependent upon the ownership of property and only to male householders satisfying a property qualification. In 1928, widened suffrage for men and women was achieved with the Representation of People (Equal Franchise) Act. Thus, 'fairness' needs to be implemented and concretised to indicate fairness without distinction for all people.¹⁹⁹ In the United States, for instance, the question of how many legislative seats should be allocated to minority groups to reflect fairness in representation remains a serious issue.²⁰⁰ In order to define fair representation, a number of elements have been taken into account; for instance, the concepts of descriptive representation and the desirability of role models, the election of members of minority groups, the relation between radical fairness and affirmative action, and focus groups with uniform voting behaviour. The legislators, as the next step, use a mathematics-based formulation to combine these factors with the electoral principle of the voting system to define a concrete number of legislative seats which should be given to each minority group.²⁰¹ In addition, to some extent, the restriction of certain groups of people, such as the ability of prisoners to vote, can challenge fairness in an election. There are some countries,

<<http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/>>, accessed 27 July 2013.

¹⁹⁹ Article 1, United Nations, Charter of the United Nations, 1 UNTS XVI, 24 October 1945.

²⁰⁰ King, G., Bruce, J., and Gelman, A., 'Racial fairness in legislative redistricting' in Peterson, P.E. (ed), *Classifying by Race* (New Jersey: Princeton Legacy Library, 1996) 86.

²⁰¹ King, G., Bruce, J., Gelman, A., and Peterson, P.E., Racial fairness in legislative redistricting, <<http://gking.harvard.edu/files/abs/racial-abs.shtml?page=6%2C1>>, accessed 27 May 2013.

including Vietnam and the UK, which do not give convicted prisoners a vote because 'a convicted person during the time that he is detained in a penal institution in pursuant of his sentence is legally incapable of voting at any parliamentary or local election'.²⁰²

The second aspect of the fairness value in the legislative process is the fairness of participation in a constituted legislature. In order to achieve this goal, people should first be granted the opportunity to approach the activities of a constituted legislature through their representative individuals or organisations. Secondly, parliamentary privilege is also a matter which needs to be taken into account and balanced with the fairness of participation of people. In the UK, all actions of Members of Parliament, in the course of parliamentary proceedings, are protected by three key elements of parliamentary privilege. Privileges are claimed for freedom of speech in Parliament, freedom from arrest, and freedom of access for those who give evidence to Parliament and/or to Members who speak in the House. Further, each House has the right to regulate its own affairs, free from intervention by the government or the courts, a situation which is known as 'exclusive cognisance'.²⁰³ Accordingly, parliamentary privilege is associated with the rule of separation of powers and permits proceedings in Parliament and decisions of the House not to be challenged in court. This privilege is recognised by Article 9 of the Bill of Rights 1689 which states that 'the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any Court or Place out of Parliament'. The case of *Stockdale v. Hansard*²⁰⁴ is an important precedent. Hansard, an official

²⁰² Section 3, Disfranchisement of Offenders in Prison, of the Representation of the People Act 1983 and Articles 29 and 30 of the Law on the Election of Deputies to the National Assembly and Deputies to People's Councils, No. 85/2015/QH13 dated 25 June 2015.

²⁰³ Blackburn, R., Kennon, A., Wheeler-Booth, M., Griffith, J.A.G., and Ryle, M., *Griffith and Ryle on Parliament: Functions, Practice and Procedures*, (London: Sweet & Maxwell, 2003): 124–125.

²⁰⁴ *Stockdale v. Hansard* (1839) 9 Ad & Ell 96; 112 ER 1112.

parliamentary reporter, by order of the House of Commons printed and published a report stating that a book of the notorious pornographer Stockdale was indecent and was circulating in Newgate Prison. The report was later published as a result of MP Joseph Hume's campaign to make better use of the mass of parliamentary papers and to improve freedom of information to the public. Stockdale sued Hansard for £500 damages for libel. He admitted that he had published the book but denied its obscenity. The defendant referred to parliamentary privilege to protect himself since the report was published by order of the House. However, the court found the House held no privilege to order the publication of defamatory material outside Parliament. Further, in this instance, the privilege did not include a person who published papers even printed by order of the House. In consequence, Parliament passed the Parliamentary Papers Act 1840 to establish the rule that neither criminal nor civil proceedings can be taken against a person who publishes under the House's authority. This claim of priority is crucial to allow a free dialogue about civic matters.

In order to achieve fairness, another vital element which should be mentioned is the use of the most appropriate language. Most countries have some minority groups who speak a different language from the majority. Therefore, using language with a complex structure and unclear meaning in the legislative process may cause uncertainty and confusion.²⁰⁵ This causes certain negative effects on the ability to participate, approach, and contribute to the legislation.

Plain and effective language is always necessary to put fairness in the legislative process into practice. The 'plain language' requirement of a legal document is not only a matter of linguistics but also amounts to a set of factors. These include linguistic factors such as the clarity and logic of language, the simple structure of a sentence, accurate grammar, and the

²⁰⁵ Noy, V., 'Appearance of fairness doctrine: a conflict in values', *Washington Law Review*, No.61 (1986): 535–538.

effort of drafters to respect the readers.²⁰⁶ One of the simplest methods to achieve plain language is to follow precedents for the structure of legislation.²⁰⁷ Adopting precedents for the structure of legislation can also make the legal system consistent. However, the drawback of the method is that it can make a confusing practice become a 'consistent confusion' for the public. Therefore, efforts have been made to standardise plain language such as the series of rules for legislative expressions which George Coode systematised in *Coode's Legislative Expression: or, the Language of the Written Law*.²⁰⁸ In accordance with Coode's system, language is scrutinised in terms of specific rules and criteria on expression, such as impersonal expression, rules of expression, and legal context.

The Plain English Campaign is an example for the effort to promote the value of fairness in the law-making process. The Campaign has raised awareness about 'presenting information so that in a single reading, the intended audience can read, understand and act upon it'.²⁰⁹ Analysing over 22,000 documents since 1979, the Plain English Campaign determines the reasons which can confuse the public and proposes solutions. Some of the main reasons are: long sentences, often trying to cover several points, verbiage, and many common terms in Latin or French. Therefore, the Plain English Campaign has proposed a set of key guides for drafting plain English documents for the public, including guidance on how to write in plain English; alternative words; glossaries for legal phrases; bibliographies for design and layout; and grammar guides on topics such as how to use capital letters, how

²⁰⁶ Brown, W., *Defining "plain English" as an aid to legal drafting*, Statute Law Review Vol.30(2) (2009): 83–86.

²⁰⁷ *Ibid*, 85.

²⁰⁸ Coode, G., *Legislative Expression: or, the Language of the Written Law* (London: Blackburn and Pardon, 1845) 7–14.

²⁰⁹ Draft in plain English, < <http://www.plainenglish.co.uk/campaigning/past-campaigns/legal/drafting-in-plain-english.html>>, accessed 3 June 2016.

to punctuate bullet points, how to punctuate sentences, and how to use apostrophes.²¹⁰

Not only the state but also other organisations issue concrete guidance on 'plain language' so that documents can be drafted in the most understandable manner. For instance, the British Columbia Securities Commission issued the *British Columbia Securities Commission Plain Language Style Guide* in 2008.²¹¹ Accordingly, a plain language is defined through a set of concrete criteria, including front size, headings, paragraphs, sentences, tables, titles, punctuation, clarity, lean language, active voice verbs, the definition of terms, and footnotes. The 'plain language style guide' of the British Columbia Securities Commission also proposes eleven questions which document drafters should answer before starting their work. These questions are: Who are your readers? Why are you writing? How do you want your readers to respond to your writing? What is the best format for your message? What details do your readers need? Is there any part of your message that is complex? What is the key point for your readers? What is the best order to use in order to put your message across? Should you separate your information? Do your readers understand the terminology? What design elements will best help your readers understand your message? Answering these questions can help document drafters choose plain language and appropriate wording to draft documents. However, documents in the legal field need to use certain technical legal terminology and specific methods of expression which are not familiar to the public. Therefore, the public also need to be trained to read legal documents.²¹²

²¹⁰ Guides for plain English, < <http://www.plainenglish.co.uk/free-guides.html>>, accessed 3 June 2016.

²¹¹ British Columbia Securities Commission: 'Plain Language Style Guide', updated March 2008, <http://professionalcommunications.ca/BCSC_Plain_Language_Style_Guide_2008.pdf>, accessed 18 February 2016.

²¹² Fieldwork, Interviewee E4.

One of the channels which Parliament can use to help citizens educate themselves and thereby enhance the capacity to read and approach legal documents is the 'Explanatory Memorandum' sector of the UK Parliament. In this sector, the UK Parliament and the government provide citizens with a glossary of terms which are used in legal documents and other documents of Parliament and the government.²¹³

2.2.3 Democracy

Democracy should be an achievement and a value of legislation in any modern society. Democracy is a significant value in the modern world. However, democracy must also meet certain challenges in the twenty-first century such as the challenge to specify boundaries to the interpretation of democracy, the impact of globalisation upon democracy, the reaction of democracy to increasing organisational and policy complexity in the contemporary state, the dilemmas that environmentalism and other global issues pose for democratic ideas and practices, and the prospects for democracy non-Western.²¹⁴ Among these challenges, the challenge of democracy in Western and non-Western contexts is of such concern that this research will take it first into account because there is a school of thought that democracy is Western and is incompatible with many aspects of non-Western societies with long histories of authoritarianism cultures.²¹⁵

Democracy is a value which was recognised early in both the capitalist and communist systems. In the Communist Manifesto 1848, Karl Marx clearly declared that 'the first step in the revolution by the working class, is to raise the proletariat to the position of the ruling class, to win the battle of

²¹³ Explanatory Memorandum, <<http://www.parliament.uk/site-information/glossary/explanatory-memorandum/>>, accessed 5 June 2016.

²¹⁴ Saward M., *Democracy* (Cambridge: Polity Press, 2003): 85.

²¹⁵ *Ibid*, 110.

democracy'.²¹⁶ Democracy can be understood as a system of community government in which the members of a community participate, or may participate, directly or indirectly, in the making of decisions which affect them all.²¹⁷ Thus, democracy emphasises the working of a collective group rather than an individual. The key ideas of democracy are that everyone is capable of having a view and having a voice, and when debate and discussion fail to reach a single agreed outcome, members shall have the right of either voting directly on decisive matters under the principle 'one person, one vote, one value' or choosing the decision-makers.²¹⁸ Thus, the value of democracy reflects a conception that all persons are of equal worth and have effective links to the value of the legislative process. In many countries in the world, especially in the EU, democracy is confirmed as a fundamental value in general, including in the law-making process.²¹⁹ In the law-making process, democracy means that an individual consciously takes a decision regarding the state's power, which means that an individual must have enough information to be able to analyse the information and express an effective opinion.²²⁰

One of the key elements of the understanding of democracy as a value in Western countries was contained in Abraham Lincoln's²²¹ significant declaration, 'Government of the people, by the people, for the people'.²²² The

²¹⁶ Chapter 2: Proletarians and Communist, Communist Manifesto 1848.

²¹⁷ DeLeon, P., *Democratic values and the policy sciences*, American Journal of Political Science (1995) Vol. 39(4): 886–890.

²¹⁸ Beetham, D., *A Beginner's Guide to Democracy* (Oxford: Oneworld, 1995): 3.

²¹⁹ Williams A., *The Ethos of Europe – Values, Law and Justice in the EU* (Cambridge: Cambridge University Press, 2010): 155.

²²⁰ Bogdanovskaia, I., *The legislative bodies in the law-making process*, Retrieved March, Vol. 13 (1999): 97–99.

²²¹ Abraham Lincoln (12 February 1809 – 15 April 1865): the 16th President of the United States, serving from March 1861 until his assassination in April 1865.

²²² Williams, A., *The Ethos of Europe – Values, Law and Justice in the EU* (Cambridge: Cambridge University Press, 2010): 156.

motto 'building a state of the people, by the people, for the people' is also officially recognised in the Vietnamese Constitution 2013 as a target for the country.²²³ Therefore, taking into account the value of democracy in the law-making process is necessary. Democracy helps with legitimacy and so aids the acceptability of legislation by those upon whom it is imposed. Those who feel that they have in some way consented to being subject to a legal obligation, not just through elections of governments but also through having a voice in the specific legislation of government, are more willing citizens than those subjected to diktat. Democracy can also be a tool to secure for adherence to for the rule of law.²²⁴ Democracy in the context of this research is understood as primarily about participation in decision making and respect for others by not treating them as instruments of power but taking to account their views and their values.²²⁵ The thesis does not contend for the direct democracy which can give rise to the difficulty of putting complex issues to a dispositive vote.

Equally, it might be politically counter-productive in Vietnam to advocate in this thesis a system of legislating which is decoupled from the prospect of democracy or more democracy. In order to promote democracy in the law-making process, there should be a determination to encourage the emergence of the public sphere.²²⁶ Here, citizens are given information and tools to actively participate in the decision-making process such as through dialogue, debate, and listening to citizens' needs and expectations.²²⁷ The value of democracy also relates to the encouragement of communication about the activities of a country or a union of countries. The development of information technology tools and the increase of the number of people,

²²³ Article 2, Vietnam Constitution 2013, dated 28 November 2013.

²²⁴ Beetham, D., *Parliament and democracy in the twenty-first century: A guide to good practice* (Switzerland: Inter-Parliamentary Union, 2006): 4.

²²⁵ Sensen, O., *Kant on human dignity* (Berlin, Walter de Gruyter, 2011): 11.

²²⁶ Calhoun, C. ed., *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1992).

²²⁷ Williams, A., *The Ethos of Europe – Values, Law and Justice in the EU* (Cambridge: Cambridge University Press, 2010): 176.

especially young people, using mass media as an interactive forum for political debate can give the value of democracy a chance to be promoted in legislation.²²⁸ This is especially relevant in the context that freedom of information has been implemented by an Act in the UK²²⁹ and a Law in Vietnam.²³⁰

The value of democracy can contribute to the law-making process in various ways. For instance, democracy contributes a further crucial value to the legislative process when it encourages people to participate in legislation proactively. Therefore, people are committing themselves to laws and becoming more responsible in implementing them.²³¹ Democracy can also help to balance the position of legislators and lay people when people have their voices and legislators have to consider issues raised by those who elect them. In a speech to the electors of Bristol, a political speech which highlights the relations between elected representatives and their electors,²³² Edmund Burke made the following point: 'Parliament is not a Congress of ambassadors from different and hostile interests but Parliament is a deliberative assembly of one nation, with one interest. You choose a member, indeed, but when you have chosen him, he is not member of Bristol, but he is a Member of Parliament.' This view was recognised as one of the significant points which affected Burke's parliamentary performance and the performance of MPs in general.²³³ Nevertheless, in most instances, democracy in representative legislatures may be not perfect, especially when a legislator faces many decisions and he/she may agree with the electors on

²²⁸ The European Commission's Plan D for Democracy, Dialogue and Debate COM (2005) 494 final 13 October 2005.

²²⁹ The Freedom of Information Act 2000.

²³⁰ The Law on Access to Information No. 104/2016/QH13, dated 6 April 2016.

²³¹ Hershovitz, S., *Legitimacy, democracy, and Razian authority*, *Legal Theory* 9, No. 3 (2003): 210–213.

²³² Langford, P., *The Writings and Speeches of Edmund Burke, Volume II: Party, Parliament and the American crisis 1766–1774*, (Oxford: Clarendon Press, 1981): 35.

²³³ The speech to the electors of Bristol of Edmund Burke, 3 November 1774.

certain issues but disagree on other issues. In this situation, the legislator has to make the final decision and this process is still better than dictatorship.²³⁴ In such case, the values of democracy in legislation are still confirmed.

The value of democracy in the legislative process is commonly associated with the freedom of association, namely the freedom to form political parties; the freedom to form other types of association including pressure groups; and the freedom of speech and publication.²³⁵ The interactions between democracy and local cultures, religions, institutions, and practices create different concepts of democracy. There is no concept of democracy which is considered uniform in the world. The interactions between democracy and these factors create thirty-four basic concepts of democracy such as assembly democracy, communicative democracy, direct democracy, electoral democracy, pluralist democracy, social democracy, and statistical democracy.²³⁶ Among these concepts and models of democracy, social democracy is the most appropriate model which can be considered a model of democracy which the law-making process in Vietnam should take into consideration.

Social democracy means that 'government involvement in life is necessary and to be applauded. State benefits are vital for rescuing families in need, and the state should step in wherever individuals, for one reason or another, are unable to fend for themselves.'²³⁷ Social democracy can be seen as the guiding ideology of many social democratic and labour parties in

²³⁴ Redish, M.H. and Christopher, P.R., *Legislative deception, separation of powers, and the democratic process: harnessing the political theory of the United States v. Klein*, North-western University Law Review No.100 (2006): 450–452.

²³⁵ Macherson, C.B., *The Real World of Democracy* (Oxford: Oxford University Press, 1978) 8–11.

²³⁶ Saward M., *Democracy* (Cambridge: Polity Press, 2003): 110.

²³⁷ Giddens A., *The Third Way – The Renewal of Social Democracy* (Cambridge: Polity Press, 2008): 6.

both Western and Eastern countries.²³⁸ Its key concept is to highlight the vital role of the modern state in providing 'social welfare', 'social investment', and tax-funded welfare services such as health and education to its citizens.²³⁹ Social democracy can be a value which enhances the quality and quantity of law because it encourages involvement and individual responsibility with regard to policymaking and other fields of society such as the economy, welfare state programmes, and the labour market.²⁴⁰

Social democracy value can be readily implemented in Vietnam because the Communist Party and the government in Vietnam pursue a policy of building a state 'of the people, by the people, and for the people' with the motto 'People know, people discuss, people do, and people monitor'.²⁴¹ The regulation of democracy at grassroots level provides a basis for people to decide on all aspects of the state's affairs.²⁴² The regulation of democracy at grassroots with Directives of the Politburo such as Directive No. 30-CT/TW and Directive No. 10-CT/TW,²⁴³ and the decrees of the government on the implementation of democracy in communes and democracy in state agencies and organisations such as Decree No. 29/1998/ND-CP,²⁴⁴ Decree No. 71/1998/ND-CP,²⁴⁵ and Decree No.

²³⁸ Keman H., *Third ways and social democracy: the right way to go?*, British Journal of Political Science 41, No. 03 (2011): 671.

²³⁹ Saward M., *Democracy* (Cambridge: Polity Press, 2003): 150.

²⁴⁰ Keman H., *Third ways and social democracy: the right way to go?*, British Journal of Political Science 41, No. 03 (2011): 672–673.

²⁴¹ Directive No. 30-CT/TW of the Politburo on the preparation and implementation of the regulation on democracy at grassroots level, No. 30-CT/TW dated 18 February 1998.

²⁴² White Book on Human Rights, The Foreign Ministry of Vietnam, dated 18 August 2005.

²⁴³ Directive No. 10-CT/TW of the Politburo on the enhancement of the preparation and implementation of the regulation on democracy at grassroots level, dated 28 March 2002.

²⁴⁴ Decree No. 29/1998/ND-CP on the implementation of democracy in communes, dated 11 May 1998.

07/1999/ND-CP,²⁴⁶ have laid a foundation for the value of democracy. This foundation enables the value of democracy to have an impact on the law-making process whereby citizens, in principle, are entitled to participate in the management of the state and society, discuss national and local issues, and make recommendations to state bodies, regardless of the citizens' sex, social backgrounds, beliefs, and religion.

The proposed method to implement the regulation of democracy at grassroots level also provides a chance for the involvement of social organisations. Directive No. 30-CT/TW of the Politburo requests that local government and all organs in the system of the Party should facilitate and encourage the participation of individuals and social organisations which are self-governed by local people in the process of making decisions.²⁴⁷ However, at commune level, the role of local social self-governed organisations and the member organisations of the Fatherland Front in the decision-making process of local policy is still limited compared with the role of the individuals who represent each household in the commune. The Ordinance of the National Assembly Standing Committee on Democracy at Commune Level²⁴⁸ provides two methods to consult public opinion on local policy: meeting with representatives of all households in the commune and collecting opinions by paper from the households.²⁴⁹ The role of social organisations and organisations of the Fatherland Front is only referred to in the context of cooperating with the local government in order to maintain social order and

²⁴⁵ Decree No. 71/1998/ND-CP on the implementation of democracy in the operation of state agencies and organisations, dated 8 September 1998.

²⁴⁶ Decree No. 07/1999/ND-CP on the implementation of democracy at state-owned enterprises, dated 13 February 1999.

²⁴⁷ Section 3, Directive No. 30-CT/TW of the Politburo on the preparation and implementation of the regulation on democracy at grassroots level, dated 18 February 1998.

²⁴⁸ The Ordinance of the National Assembly Standing Committee on Democracy at Commune Level No. 34/2007/PL-UBTVQH, dated 20 April 2007.

²⁴⁹ *Ibid*, Article 11.

implement the resolutions which are agreed by the commune.²⁵⁰ Although the role of social organisations and CSOs in making decisions at commune level is limited, the regulation on democracy at grassroots level in the form of Directive No. 30-CT/TW of the Politburo is a basis for the development of the value of democracy in Vietnam in general and for making legislation in particular.

2.2.4 Participation

Participation is a value which is relevant to the legislative process because it helps to strengthen relations among citizens, policymakers and lawmakers. In modern society, the participatory mechanisms are diverse and include direct participation and/or other tools of e-government, digital democracy, and discursive democracy. All of these are designed to widen the chances for the policymakers and lawmakers to tap new sources of ideas and hear a wider range of people's voices before making final decisions.²⁵¹ From this perspective, participation contributes to building public trust in government, Parliament, and laws, which is crucial for good governance. Participation should be facilitated and reflected by mature deliberation among members of the public and among legislators, not only in collective forms but also in individual forms.²⁵² The public can also participate in legislation indirectly through their right to vote. This indirect method of the public's participation through the right to vote was analysed in Section 2.2.2.

The value of participation in the legislative process is generally recognised and characterised in four main ways. The first is participation as

²⁵⁰ Ibid, Article 12.

²⁵¹ Caroline, J.T., Ramona, S.M., and Daniel, A.S., *Enhancing civic engagement: the effect of direct democracy on political participation and knowledge*, State Politics & Policy Quarterly 3, No.1 (2003): 23–41.

²⁵² Peter, H.S., *Delegation and democracy: comments on David Schoenbrod*, Cardozo Law Review No.20 (1998): 780.

voting. Participation can be viewed as a mechanism for individuals to express their preferences which can be used as a basis for making regulatory decisions. The second is participation as deliberation. Accordingly, participation provides a process by which individuals engage in a deliberative process which aims to achieve a rational consensus over a regulatory decision. The third is participation as citizenship. Participation is considered intrinsically valuable for citizens themselves and fosters vital personal virtues. The fourth is participation as information, whereby participation can be viewed as valuable because it provides legislators with additional valuable information which helps them to make better decisions.²⁵³

In order to implement the value of participation, people may exercise participation by various means and at different stages of the legislative process. Amongst various choices, the administrative agencies seem the most accessible site for various reasons.²⁵⁴ First, the administrative agencies are places where many of the most important policies and regulations are made. Such agencies are also where the public can easily provide the government with the true nature of their problems rather than addressing these in the parliamentary process. Second, the costs for effective participation or seeking influence over members of these agencies are likely to be lower than the costs of lobbying or making an impact on Parliament. Third, the institutional culture of the administrative agencies is probably more used to dealing with lay people than the culture and activities of Parliament, which may be affected by royal culture.²⁵⁵

In order to promote effectively the value of participation in the legislative process, potential advantages and drawbacks should be

²⁵³ Coglianesi, C., *The Internet and citizen participation in rulemaking*, Journal of Law and Policy for the Information Society, No.1 (2005): 33–40.

²⁵⁴ Peter, H.S., *Delegation and democracy: comments on David Schoenbrod*, Cardozo Law Review No.20 (1998): 776–789.

²⁵⁵ Ibid.

considered. Participation has a number of advantages which benefit the legislative process itself, both in terms of the process and the outcomes.²⁵⁶ For instance, citizens have a chance to inform and persuade lawmakers. Moreover, legislators have a chance to learn a great deal about the problems which affect the daily lives of citizens and have an opportunity to explain the reasons for pursuing policies that, at first, may not be popular with, or familiar to, the public. Therefore, participation develops the long-term capacity to solve and manage challenging issues and overcome public misunderstanding.²⁵⁷ It is assumed that a greater number of participants with a more sophisticated level of technical social understanding results in a better outcome for legislation, reduces or even avoids litigation costs, and yields better implementation decisions.²⁵⁸ However, participation also entails certain drawbacks and limitations. For example, the greater the participation by the public in the law-making process, the greater the amount of time which is required for legislation. Further, incorrect decisions may be taken if they are heavily influenced by opposing interest groups or may even lead to situations whereby a government or legislator loses decision-making control.²⁵⁹

Another limitation of the value of participation which has been raised recently is the limit on the role of the public in determining policy regarding issues of science and technology, such as the siting of radioactive waste facilities and the prioritisation of environmental risk mitigation issues.²⁶⁰ The

²⁵⁶ Nelson, N. and Susan, W., *Power and Participatory Development: Theory and Practice* (Intermediate Technology Publications Ltd (ITP), 1995): 10.

²⁵⁷ Public participation guide, <<http://www.epa.gov/international/public-participation-guide/>>, accessed 3 June 2013.

²⁵⁸ Renee, A.I. and John, S., *Citizen participation in decision-making: is it worth the effort?*, *Public Administration Review* 64, No. 1 (2004): 55–65.

²⁵⁹ *Ibid*, 58–60.

²⁶⁰ Carol, A.C., *Public input and siting of a waste disposal facility: New York State's Low Level Radioactive Waste Policy Act of 1986*, *Bulletin of the New York Academy of Medicine* 65, No. 4 (1989): 511–516.

mechanism to enhance the value of the participation of the public in the legislative process regarding science and technology, particularly regarding health and environmental risk management, recognises basic human rights about democracy and procedural justice need to be paid more attention.²⁶¹ However, this mechanism should go with the enhancement of the level of public understanding about risk evaluation in science and technology. If the level of public participation is extremely wide in all cases, rather than left in the hands of experts and scientists,²⁶² decisions may become impossible. Therefore, in the science and technology field, where the expertise of experts and scientists is necessary and highly respected, legislators could apply the rule of ‘public involvement’ rather than ‘public participation’.²⁶³

The Infrastructure Act 2015 can be taken as an example. In order to support the government in planning and managing the infrastructure projects, the Infrastructure and Project Authority (IPA) was established as a government body to provide expertise advice and support to government projects.²⁶⁴ The advice from the IPA will be seriously listened and is considered as a contribution that can benefit British economy and benefit taxpayers.²⁶⁵

²⁶¹ Frank, N.L., *Participatory analysis, democracy, and technological decision making*, Science, Technology and Human Values 18, No. 3 (1993): 341- 361.

²⁶² Ralph, M. P., *Defining risk: normative considerations*, Human and Ecological Risk Assessment No. 2 (1996): 381–392.

²⁶³ Rowe, G., and Frewer, J.L., *Public participation methods: a framework for evaluation*, Science, Technology and Human Values 25, No. 1 (2000): 3–10. This explains that ‘public involvement’ requires a lower level of involvement than more value-based decisions. Moreover, ‘public participation’ encompasses a group of procedures designed to consult, involve, and inform the public in order to allow those affected by a decision to have an input into that decision.

²⁶⁴ Infrastructure and Project Authority, <<https://www.gov.uk/government/organisations/infrastructure-and-projects-authority>>, accessed on 6 March, 2016.

²⁶⁵ Ibid.

In order to ensure the value of participation in the law-making process, lobbying and the activity of lobbyists should also be taken into account. Lobbying activities involve lobbying contacts (including any oral, written, and electronic communication) and efforts in support of such contacts. Such efforts include preparation and planning activities, and research and other necessary background work, at the time they are performed, for use with contacts and for coordination with the lobbying activities of others.²⁶⁶ Generally, lobbying is undertaken by interest groups. Their lobbying efforts affect three types of legislator: those who are likely to vote in favour of the group's position, those who are predisposed against the group's position, and those who are uncommitted.²⁶⁷ Lobbying may start from the election period to support a candidate whom the lobbyists may find matches their purposes through donations to pre-election and election campaigns. Business donors may also finance parties and provide other favours.²⁶⁸

Lobbying is often recognised as a dubious activity because it is associated with corruption, unequal access, and distrust.²⁶⁹ However, lobbying can be helpful to democracy because it can increase public confidence in the integrity of government²⁷⁰ and can make legislative activity more dynamic. Lobbying can be a serious business, conducted by those who understand the legislation in detail and its demands. Professional lobbyists do not only spend time arranging meetings with elected officials; they also devote their time to the other aspects of preparation, research, and analysis regarding the issues of legislation or regulatory proposals. Further,

²⁶⁶ 2 U.S Code, Section 26 – Disclosure of lobbying activities, Section 1602 (7–8) – Definitions (2000).

²⁶⁷ Smith, D.A. and Wright, J.R., *Counteractive lobbying*, American Journal of Political Science Vol. 38, No. 1 (1994) 25–28.

²⁶⁸ Public Administration Select Committee, Second Report of Session 2007–08, Propriety and Peerages, HC 153.

²⁶⁹ Krishnakumar, A.S., *Towards a Madisonian, interest-group-based, approach to lobbying regulation*, Alabama Law Review 58 (2006): 513–516.

²⁷⁰ 2 U.S Code, Section 26 – Disclosure of lobbying activities, Section 1601(3) – Findings (2000).

professional lobbyists monitor developments and evaluate statistics in order to make comprehensive recommendations or proposals to legislators.²⁷¹

In the UK, the activities of lobbyists are regulated by the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 helps to ensure transparency for the activities of lobbyists through its regulations. These cover issues such as the requirement to register, the duty to monitor, the notice to supply information, the limitations on the duty to supply information and the use of supplied information, the control of expenditure, and the reporting of donations to recognised third parties. The two main public concerns about lobbying are *quid pro quos* and unequal access.²⁷² From the public perspective, a lobbyist can exert undue influence on the policymaking or law-making process by using financial pressure on elected officials through campaign contributions and personal gifts. However, without an effective control system, this unfair approach and unequal access to the scheduled meetings of lawmakers may bias the attention of the policymakers or lawmakers against the benefit of most people. Evidence has shown that whether lobbyists have access to ‘revolving doors’ or not may provide a better opportunity to establish a close connection with elected officials than ordinary citizens can obtain.²⁷³

In order to give a chance for a broader group of organisations to participate in the law-making process, public charities need to be encouraged

²⁷¹ Nicholas, W.L., *Lobbying is an honorable profession: the right to petition and the competition to be right*, Stanford Law and Policy Review No.19 (2008): 44–45.

²⁷² Krishnakumar, A.S., *Towards a Madisonian, interest-group-based, approach to lobbying regulation*, Alabama Law Review No.58 (2006): 523–525.

²⁷³ William, H.W., *Lobbying, the Revolving Door, and Campaign Contributions: The Bottom Line or Public Health: Tactics Corporations Use to Influence Health and Health Policy, and What We Can Do to Counter Them* (Oxford: Oxford University Press, 2010): 148.

to participate in lobbying by reducing the costs of lobbying.²⁷⁴ In addition, the role of the public media and state watchdogs should be enhanced in order to collect public views and contribute to the law-making process.²⁷⁵ The media can scrutinise not only the legislative process but also the activities of the lobbyists from a neutral stance. The participation value of including lobbying has contributed to the enhancement of the quality and quantity of laws. The value of participation can ensure that the expectations and voices of citizens for policy and legal choice are considered. Whatever the form of participation, whether community meetings, citizen advisory committees, or lobbying, the value of participation can help to share the power between the governed people and the government and make the relationship between the people and the government healthier.²⁷⁶ In this sense, it can be concluded that the value of participation is one of the core values of the legislative process. In sum, in order to make participation successful, the following are required: a clear purpose and goals; a clear structure and process; an actual opportunity for influence; commitment to the process; and inclusive, effective representation.²⁷⁷ These requirements and the detailed connotation of the value are analysed and illustrated in the following part of this chapter and, especially, in Chapters 4, Chapter 5, and the conclusion.

2.3 The concept of civil society organisations in Vietnam and the UK

Determining the concept of CSOs in Vietnam and the UK is one of the vital tasks of the thesis to lay the foundation of understanding of CSOs in two

²⁷⁴ Galston, M., *Lobbying and the public interest: rethinking the Internal Revenue Code's treatment of legislative activities*, Texas Law Review No.71 (1992): 1269–1343.

²⁷⁵ Nicholas, W.L., *Lobbying is an honourable profession: the right to petition and the competition to be right*, Stanford Law and Policy Review No.19 (2008): 31–32.

²⁷⁶ Bishop, P. and Davis, G., *Mapping public participation in policy choices*, Australian Journal of Public Administration 61, No 1 (2002): 14–29.

²⁷⁷ Public participation guide,

<<http://www.epa.gov/international/public-participation-guide/>>, accessed 3 June 2013.

countries, especially when the concept of CSO has not been recognised in any legal documents in Vietnam. In addition, identifying the concept of CSOs makes the content of the thesis consistent and contribute to answer the thesis question about the importance of participation of CSOs in the law-making process.

2.3.1 The concept of civil society organisations in Vietnam

The right to establish and participate in an association was recognised and officially provided for very early in Vietnam. Three years after declaring the independence of the Democratic Republic of Vietnam, in 1957, President Ho Chi Minh signed Order No.102 to provide the right to establish an association.²⁷⁸ In compliance with the Order, the right to establish and to participate in an association of all eligible citizens²⁷⁹ is respected and protected as long as the association has legitimate purposes, is in accordance with the people's interest, and contributes to the development of the country. This Order is still in effect and is used as a legal basis for central and provincial governments to issue decrees and directives related to the right of association of people. Recognising the need to have a new Law on Associations, the government first presented the Bill on Associations to National Assembly term XI in 2006 in accordance with Resolution No. 49/2005/QH11 of the National Assembly.²⁸⁰ The Bill was discussed at the 18th meeting session of the National Assembly. However, the National Assembly did not achieve consensus to pass the Bill. Thus, the Bill was delayed until 2016.

In the current Constitution of the Socialist Republic of Vietnam,²⁸¹ the right of association is recognised in Article 69²⁸² and implemented by Decree

²⁷⁸ Order No. 102/SL-L004 of 20 May 1957.

²⁷⁹ Article 2, Order No. 102/LS-L004 provided that 'eligible people' means everyone except those who are disenfranchised or subject to prosecution under the law.

²⁸⁰ Resolution No. 49/2005/QH11 of the National Assembly, dated 19 November 2005.

²⁸¹ Constitution 2013 of the Socialist Republic of Vietnam, dated 28 November 2013.

No. 45/2010/ND-CP²⁸³ of the government and Circular No. 11/2010/TT-BNV of the Ministry of Home Affairs.²⁸⁴ Accordingly, all citizens have the right to establish an association as long as it complies with the conditions provided in Article 5 of Decree No. 45/2010/ND-CP.²⁸⁵ Depending upon the scope and scale of operation of an association, it will obtain establishment approval from the Ministry of Home Affairs at the central level or the Mayor of the People's Committee at the provincial level. The minister of the Ministry of Home Affairs and the Mayor of the People's Committee at provincial level are the persons who make the final decision about whether an association is established 'in accordance with the people's interest and contributes to the development of the country'.

In Vietnam, the concept of CSO has not yet been officially recognised in any legal documents. At present, the concept of CSOs in Vietnam is placed in a broad concept of diverse groups of social organisations. There are groups which can be categorised as 'social organisations' in Vietnam: Political-Social-Professional Organisations; Social-Professional Organisations; Social Organisations; Humanitarian-Charitable Organisations; Friendship Organisations; Non-governmental Public Service Entities; Non-

²⁸² Article 25, Vietnamese Constitution 2013 provides that citizens are entitled to freedom of speech and freedom of the press. They also have the right to receive information and the right to assembly, association, and demonstration in accordance with the law.

²⁸³ Decree No. 45/2010/ND-CP dated 21 April 2010 provides for the organisation, operation, and management of associations.

²⁸⁴ Circular No. 11/2010/TT-BNV dated 26 November 2010 acts as guidance for the implementation of the government's Decree No. 45/2010/ND-CP, providing for the organisation, operation, and management of associations.

²⁸⁵ The conditions for the establishment of associations under Article 5 of Decree No. 45/2010/ND-CP are: (i) having operational purposes not contrary to the law, having names and main operational domains not identical to those of associations which have been previously set up lawfully in the same geographical areas; (ii) having charters; (iii) having head offices; and (iv) having an adequate number of members who are registered for joining associations.

governmental Funds in the Humanitarian Field; Charitable Organisations; Social-Cultural Promotion Organisations; and Community Organisations for the purpose of bloodline preservation, religion, and hobbies.²⁸⁶ The concept of 'social organisation' within the types of organisation was proposed based on common features: such an organisation is not a government entity, is voluntary, has a not-for-profit purpose, is self-governed, is essentially or totally self-funded, and adopts a consensus-based approach for decision making.²⁸⁷ In addition, political-social organisations in Vietnam do not have equivalent organisations in the UK, and not all social organisations in Vietnam are CSOs in accordance with the proposed definition of CSOs in this thesis.

Based on the proposed definition and features of CSOs in Chapter 1, some organisations among the groups of organisations are not CSOs. Specifically, three groups are exempt. Firstly, Friendship Organisations (*Hoi huu nghi*) are exempt because such organisations are established for the purpose of strengthening the diplomatic relationship between two countries through a working plan which adheres to the diplomatic policy of two governments rather than for the public interest. For instance, the annual working plan of the Vietnam-Japan Friendship Organisation is to organise cultural and education-exchange activities, and to promote tourism and economic cooperation between the two countries through workshops, seminars, and delegation exchange visits.²⁸⁸ Secondly, Non-governmental Public Service Entities (*don vi su nghiep ngoai cong lap*) are exempt from the concept of CSOs in Vietnam because such entities are organised and

²⁸⁶ Phuc T.V., 'The role of the social organisation in social and economic development in the socialist-oriented development of Vietnam', Research of the Ministry of Home Affairs, National Research Code: KX.02/06-10, Hanoi (2010): 28.

²⁸⁷ Ibid, 29.

²⁸⁸ Introduction to the Vietnam-Japan Friendship Association

<http://vjbc.org.vn/index.php?modules=menutop&classic_id=97&cat=192&id=156>, accessed 11 March 2016. The Charter of the Vietnam-Japan Friendship Association in Ho Chi Minh City can also be seen at <<http://hufo.hochiminhcity.gov.vn/web/guest/hoi-hn-viet-nam-nhat-ban>>.

operated in the form of business entities and for-profit purposes.²⁸⁹ Thirdly, Community Organisations for the purpose of bloodline preservation, religion, and hobbies are not CSOs. Although this group of organisations has independence and some of the organisations have a remarkable number of members,²⁹⁰ the activities of Community Organisations for the purpose of bloodline preservation, religion, and hobbies are mainly internal activities for their members. For example, the most important activities of the 'Vu-Vo' bloodline preservation organisation (*Hoi dong dong ho Vu- Vo*) is to preserve and promote good traditions and cooperation among people who have the family name of 'Vu-Vo'.²⁹¹ Further, the main purpose of establishing an 'organisation of people who like to go to the pagoda and worship' (*Hoi nhung nguoi thich di chua tung kinh*) is to go to the pagoda, worship, and organise or participate in humanitarian activities.²⁹² These organisations are not CSOs with CSOs' full features in accordance with the definition proposed by the thesis in Chapter 1.

Determining the concept of CSO in Vietnam related to the social-political organisations, the role of Vietnam Fatherland Front (*Mat tran To quoc Viet Nam*) should be taken into account. The Vietnam Fatherland Front acts on social issues and attempts to consolidate the cohesive relationship between people and the Communist Party, and people and the state. The Vietnam Fatherland Front is referred to as the first and the most important organisation which acts on social issues because it was established early in

²⁸⁹ National Assembly meeting report <<http://hanoimoi.com.vn/Tin-tuc/Chinh-tri/391075/lam-ro-hon-khai-niem-don-vi-su-nghiep-cong-lap>>, accessed 10 March 2016.

²⁹⁰ For instance, the Community Organisation for 'Vu-Vo' bloodline preservation has over 3,000 members<http://www.hovuvovietnam.com/anh-dai-hoi-VI-Dong-ho-Vu-Vo-Viet-Nam_tc_294_0_598.html>, accessed 12 March 2016.

²⁹¹ Core Resolution of the 'Vu-Vo' bloodline preservation organisation on the activities of the organisation<http://hovuvovietnam.com/QUY-uoC-Hoi-dong-dong-ho-Vu-Vo-Viet-Nam_tc_304_305_600.html>, accessed 12 March 2016.

²⁹² Organisation of people who like to go to the Pagoda and worship, <organisation of people who like to go to the pagoda and worship>, accessed 12 March 2016.

the history in Vietnam in 1955.²⁹³ The aims of the Vietnam Fatherland Front at that time were to unite all forces to defeat the US, leading to an independent, united, democratic, and prosperous country. The Vietnam Fatherland Front confirmed its role and effect not only in the war but also in the post-war period. The Vietnam Fatherland Front has actively participated in the socialist renovation of agriculture, industry, and commerce, and has motivated people to participate in the election of the National Assembly and People's Councils at all levels.²⁹⁴ The Vietnam Fatherland Front, therefore, is closely connected with the Communist Party, the force which led the people in the Vietnam War, and is considered a crucial link in the chain of the political system in Vietnam.

The role and function of the Vietnam Fatherland Front have been recognised in the Vietnam Constitution 2013²⁹⁵ and in the Law on the Vietnam Fatherland Front.²⁹⁶ This role and function relate to the allied political organisation and voluntary union of political organisations; social-political organisations; social organisations; and representative individuals of social strata and classes, ethnic groups, religions, and Vietnamese people residing abroad. Accordingly, the Vietnam Fatherland Front plays the role of an umbrella under which some basic types of social organisation in Vietnam, such as social-political organisations and social organisations, are unified.

One problem here is that the Vietnam Fatherland Front should not be recognised as a CSO because it is not an 'independent' organisation according to the meaning of this feature in the proposed definition of CSOs in

²⁹³ The Establishment Congress of the Vietnamese Fatherland Front was held on 10 September 1955 in Hanoi.

²⁹⁴ Introduction to, and history of, the Vietnamese Fatherland Front, official website of the Vietnamese Fatherland Front, <<http://www.mattran.org.vn/Home/GioithieuMT/gtc1.htm>>, accessed 10 March 2014.

²⁹⁵ Article 9, Vietnamese Constitution 2013, dated 28 November 2013.

²⁹⁶ Article 1, Law on the Vietnamese Fatherland Front No. 14/1999/QH10 of 12 June 1999.

Chapter 1 of the thesis. Thus, as ‘a part of the political system of the Socialist Republic of Vietnam, led by the Communist Party of Vietnam; and constituting a political base of the people’s administration’,²⁹⁷ the working plan of the Vietnam Fatherland Front is connected closely to the annual working scheme and direction of the Vietnamese Communist Party. In addition, the major part of the funding for the maintenance and functioning of the Vietnamese Fatherland Front, including the annual fund for the organisational structure and staff salaries, is provided by the state budget.²⁹⁸ This financial arrangement fundamentally affects the independence of the organisation. However, one crucial point should be noted here. The depiction of the Vietnam Fatherland Front as a non-CSO does not necessarily impose the same effect on the recognition of allied organisations of the Vietnam Fatherland Front. As long as other organisations can demonstrate their independence and satisfy the other conditions of CSOs in the proposed definition, they can be regarded as CSOs.

According to the provision of the Law on the Vietnam Fatherland Front, the first group of organisations which is taken into account is the group of social-political organisations. Generally, the group of social-political organisations aims to provide a social and political platform for people to exercise administration and their rights. The group has five organisations: the Vietnam Trade Union, the Vietnam Peasant’s Association, the Ho Chi Minh Communist Youth Union (including the Youth Federation), the Vietnam Women’s Union, and the Vietnam Veteran’s Society.²⁹⁹ In Vietnam, all social-political organisations are recognised and regulated under the regulation of ‘particular associations’ of Vietnam provided by Decision No. 68/2010/QD-TTg of the Prime Minister.³⁰⁰ ‘Particular associations’ are those which play an important role in national social and economic development; therefore, they

²⁹⁷ Section 2, Article 1, Law on the Vietnamese Fatherland Front No. 14/1999/QH10 of 12 June 1999.

²⁹⁸ Ibid, Article 14 and Article 16.

²⁹⁹ Article 9, Vietnamese Constitution 2013, dated 28 November 2013.

³⁰⁰ Decision No. 68/2010/QD-TTg of the Prime Minister on Particular Organisations dated 1 November 2010.

can request financial support from the state when they encounter a financial crisis which may prove negative to the daily operational matters. In general, particular associations display all the basic characteristics of associations and must have extra characteristics depending upon the category in which they fall according to Article 1 of Decision No. 68/2010/QĐ-TTg. For example, with regard to social-political organisations, the core extra characteristic is to be recognised by a competent Party agency. Further, particular social organisations have to satisfy extra characteristics. These are to operate for social and humanitarian purposes; to be an association of those with difficulties and disadvantages who need social and state attention and assistance; and to have received financial and operational support from the state before the effective date of government's Decree No. 45/2010/NĐ-CP of 21 April 2010 on the organisation, operation, and management of associations.³⁰¹

Although these organisations are listed as 'partial' political organisations, they are distinguished from other fully politically oriented organisations by their constituted nature, which involves having a 'voluntary base formed to represent and protect the legal and legitimate rights and interests of their members'.³⁰² The voluntary principle of social-political organisations is expressed from two angles: the free choice of people to be a member of an organisation and the free choice of members to refuse to participate in particular activities of the organisation to which they were admitted as members. The free choice to be a member of a social-political organisation is recognised in the charter of all social-political organisations. For example, Article 3 of the Charter of the Youth Federation,³⁰³ Article 9 of the Charter of the Women's Union,³⁰⁴ and Article 3 of the Charter of the Peasant's Association³⁰⁵ provide that the potential member³⁰⁶ must declare

³⁰¹ Ibid, Article 1.

³⁰² Article 9, Vietnamese Constitution 2013 of 28 November 2013.

³⁰³ Charter of the Youth Federation (Amendment), passed on 14 October 2010.

³⁰⁴ Charter of the Women's Union (Amendment), passed on 14 March 2012.

³⁰⁵ Charter of the Peasant's Association (Amendment), passed on 3 July 2013.

that it is his or her free choice to be a member of that organisation in writing before being admitted to the organisation. Members of an organisation can make their choice to refuse to participate in a particular activity of the organisation because the charters of all of the organisations do not have any provision that the member must participate in all activities.

Generally, social organisations, including social-political organisations, encourage members to participate in all activities by rewarding active and outstanding members. If a member fails to participate in a particular activity because of personal choice, there is no negative consequence regarding his/her membership status. In general, the 'political' element in the recognition of social-political organisations is not associated with the political interference of the Party in the annual working plan of these entities but is closer to the meaning of providing the legal assurance for their existence and sustainability.

The Trade Union can be taken as an example of social-political organisations. The Trade Union were established in the formative years of the Democratic Republic of Vietnam and the Socialist Republic of Vietnam based on the formation of workers' forces. The Vietnamese worker class was established from the colonial exploitation of France in Vietnam and the development of a mining industry, textile work, and transportation. The number of workers in Vietnam before the First World War I had reached 100,000, when the majority of workers had previously been farmers. In this period, some protests were held but they were spontaneous and without

³⁰⁶ Depending upon the aims and activities of each organisation, the organisation defines its potential members in its charter. For instance, the potential members of the Youth Federation are all Vietnamese citizens who are in the age bracket of 16 to 30; the potential members of the Women's Union are all women from 18-years old; and the potential members of the Peasant's Association are all peasants from 18-years old. Except for the Youth Federation, the minimum age which other social-political organisations set for their potential members is 18 so that they are fully able to make decisions on becoming a member of a particular organisation.

leadership and simply focused on income and respect for life. In 1921, Ton Duc Thang, who later became one of the Presidents of Vietnam, formed the '*Cong hoi*' (a very initial form of Trade Union in Vietnam) with the purposes of first to facilitate the interaction of workers; second, to help workers study together; third, to enhance quality of life and correct the misconduct of workers in daily life; fourth, to protect the rights of workers; and fifth, to help other people in the country and participate in the workers' movement worldwide.³⁰⁷

'*Cong hoi*' made a significant contribution to the workers' movement in Vietnam and laid the foundation for the current Trade Union as well as being an important force that assisted the Communist Party to achieve its targets as a state 'of the people, for the people'. Broadly, the Trade Union's current tasks are to unite workers across the country, protect national independence, and protect the rights and interests of workers. Therefore, the Trade Union have a link to the Party and a clear position in the political system of Vietnam. At present, the Trade Union are the only association for workers in Vietnam. However, according to Section 19 of the Trans-Pacific Strategic Economic Partnership Agreement (TPP) which Vietnam has signed and certified on 19 February 2016,³⁰⁸ Vietnam will adopt and implement the right to association in accordance with the ILO Declaration on Fundamental Principles and Rights at Work 1998.³⁰⁹ Accordingly, other Trade Union are encouraged and expected to be established in the future.

³⁰⁷ History of the Trade Union, official website of the Vietnamese General Confederation of Labour, <<http://www.congdoanvn.org.vn/details.asp?l=1&c=23&c2=23&m=216>>, accessed 10 March 2014.

³⁰⁸ The full TPP documents can be read at the TPP section of the website of the Ministry of Industry and Finance, <<http://tpp.moit.gov.vn/default.aspx?page=tpp&do=home&dir=dakyket>>.

³⁰⁹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (annex revised 15 June 2010).

According to the Law on Trade Union,³¹⁰ the relation between the state and the Trade Union and the duties of the state with respect to Trade Union are provided in four aspects: (i) ensuring, assisting, and facilitating Trade Union to implement their functions, powers, and duties as prescribed by law; (ii) propagating, spreading, and educating about labour law, trade union law, and other provisions of laws related to trade union organisation, rights, and the obligations of workers, together with inspecting, examining, supervising, and handling acts violating the Law on Trade Union and cooperating with Trade Union to ensure the legal and legitimate rights and interests of workers; (iii) consulting with Trade Union about formulating policies, laws directly related to Trade Union organisation, and the rights and obligations of workers; and (iv) coordinating and facilitating Trade Union to participate in state management and eco-social management, and to represent and protect the legal and legitimate rights and interests of workers.³¹¹ Accordingly, each Trade Union has a right to determine its own annual working plan based on its rights and duties provided in Chapter 2 of the Law on Trade Union and its long-term, periodical, and short-term targets. In principle, there are no requirements for the annual working plan to be approved and directed by the Party or any state body entities. In addition, in a different way from the Vietnamese Fatherland Front which is fully funded by the State, the funding of the state for Trade Union relates to only one of four financial sources.

The Trade Union express their ability to be independent in terms of funding with three other funding sources which are as follows: Trade Union fees which are paid by Trade Union members; Trade Union funds which are paid by agencies, organisations, and enterprises in the form of 2% of salary as social insurance for workers, together with other revenue from the cultural, sporting, or economic activities of Trade Union such as research projects for which the Trade Union can be paid and plans assigned by the state; and

³¹⁰ Law on Trade Union (Amendment) No. 12/2012/QH13, dated 20 June 2012.

³¹¹ Ibid, Article 21.

from aid provided by domestic and foreign organisations and individuals.³¹² The same framework of independence in determining working plans and funding through other additional financial sources of Trade Union is also applied to other social-political organisations by their statutes. Therefore, taking into account that social-political organisations in Vietnam are well-organised, have independence in determining annual working plans and funding, have a common purpose to work for public welfare and provide a platform for people to exercise their rights, and use non-violent methods to pursue their targets, social-political organisations in Vietnam can more readily be recognised as CSOs and become the object of study of this thesis.

The second group of CSOs in Vietnam comprises social-professional organisations. Social-professional organisations are very common and diverse in Vietnamese social life. They are generally established for the purpose of consolidating all people who work in the same professional field in order to promote their profession and contribute to the development of society and public welfare. For example, the Vietnam Lawyers' Association, one of the important social-professional organisations in Vietnam, states in its objectives that its purpose is 'to widely unite and gather Vietnamese lawyers who have done, or are doing, legal work in the offices of the state, political organisations, social-political organisations, social organisations, economic organisations, cultural organisations, educational organisations, and the people's armed forces, and who volunteer to act for the cause of building and defending their Fatherland, for the defence of the people's right to freedom and democracy, contributing to building a legal science and a Vietnam governed by law with the following objectives: the people should be rich, the country should be powerful, and society should be equal, democratic, and civilized'.³¹³ Social-professional organisations reflect the features of the CSOs which were mentioned in Section 1.4.1 and make significant contributions to the development of Vietnam. They are well-organised organisations with strong systems from central to local levels. They

³¹² Ibid, Article 26.

³¹³ Article 1, Charter of Vietnamese Lawyers' Association, edn in 2010.

independently plan their annual working plans and are non-violent when acting to achieve their goals.

In addition to the basic legal regulation of social organisations, there are fourteen social-professional organisations regulated by Decision No. 68/2010/QĐ-TTg of the Prime Minister on the 'Particular Organisations'. These organisations are the Vietnam Writers' Association, the Vietnam Journalists' Association, the Vietnam Lawyers' Association, the Vietnam Folk Art Association, the Vietnam Composers' Association, the Vietnam Film Association, the Vietnam Dancers' Association, the Vietnam Architects' Association, the Vietnam Fine Arts Association, the Vietnam Stage Artists' Association, the Vietnam Literature and Arts Association of Ethnic Minorities, the Vietnam Photographic Artists' Association, the Vietnam Oriental Traditional Medicine Association, and the Vietnam Medical Association.³¹⁴ These organisations receive recognition as special groups because of the importance of their activities to society.³¹⁵ By recognising these organisations as 'particular groups', they are eligible to request financial support from the state when they meet difficulties in raising funds for their operations.³¹⁶ However, financial support from the government is not the only source of finance to maintain and conduct the activities of these fourteen organisations. The government does not use financial support as a means to put pressure on the organisations. For instance, from 22 August 2008, the government and the Vietnamese Fatherland Front agreed a Joint Resolution on Coordination between the government and the Central Committee of the Vietnamese Fatherland Front.³¹⁷ Accordingly, the government facilitates the

³¹⁴ The list of national particular associations is provided in the appendix of the Decision on Particular Associations of the Prime Minister of Vietnam, No. 68/2010/QĐ-TTg of 1 November 2010.

³¹⁵ Article 1, Decision No. 68/2010/QĐ-TTg of the Prime Minister on Particular Organisations, dated 1 November 2010.

³¹⁶ Article 35, Decree No. 45/2010/ND-CP on Associations, dated 21 April 2010.

³¹⁷ The Joint Resolution on Coordination between the government and the Central Committee of the Vietnamese Fatherland Front, No. 19/2008/NQLT/CP-UBTUMTTQVN, dated 22 August 2008.

activities of member organisations of the Vietnamese Fatherland Front in order to enhance solidarity and promote the creativity of all people in the country.³¹⁸ There are neither restrictions nor particular requests on framing the activities of the Vietnamese Fatherland Front and its member organisations provided in the Joint Resolution. Therefore, the organisations are competent to be listed as CSOs in Vietnam in the context of the proposed definition and features of CSOs given in this thesis.

The third group of CSOs in Vietnam comprises social organisations which are established neither for political nor professional purposes. The social organisations in this category are known as voluntary organisations of citizens. They are organisations of Vietnamese for the common purposes of gathering and uniting members, aiming to protect members' legitimate rights and interests, supporting one another for the purpose of efficient activities, and contributing to the country's socio-economic development such as the Vietnam Young Entrepreneurs Association (*Hoi Doanh nhan tre Viet Nam*), the Real Estate Association (*Hiep hoi bat dong san*). They are regulated by Decree No. 45/2010/ND-CP of the government providing for the organisation, operation, and management of associations.³¹⁹ The activities of this group are diverse. Social organisations can participate in particular programmes and projects or actively provide the public with their views on specific matters related to their working areas or functions.³²⁰

There may be an argument that because the three groups of social associations which are categorised as CSOs are established and registered in accordance with Decree No. 45/2010/ND-CP, they can be affected by the government; hence, the 'independence' factor cannot be attained. To some

³¹⁸ Article 1, The Joint Resolution on Coordination between the government and the Central Committee of the Vietnamese Fatherland Front, No. 19/2008/NQLT/CP-UBTUMTTQVN, dated 22 August 2008.

³¹⁹ Decree No. 45/2010/ND-CP on the Organisation, Operation, and Management of Associations, dated 21 April 2010.

³²⁰ *Ibid*, Article 23.

extent, the activities of social associations are the object of guidance from state management agencies in charge of the sectors or domains in which the associations operate. However, the provision in Article 24 of Decree No. 45/2010/ND-CP about the obligations of associations does not imply any requirement for approval from the state regarding their annual working plans or direct interference in their specific activities. Therefore, in principle, social associations have their own right to determine their working plans and their funds together with the method of achieving their goals. In accordance with the proposed definition of CSOs in Chapter 1, the social organisations which are analysed in this section are CSOs and will be taken into account in the study of CSOs in this thesis.

In addition, although CSOs are asked to send summary reports of their work to the authorised state agencies annually, or as occasionally demanded, they have their own right to formulate their working plans. Through this reporting system, the government and related state agencies can know the work of CSOs and propose solutions to some of the problems of organisations on the principle of non-interference in the internal affairs of organisations.³²¹ In principle, the Ministry of Home Affairs and the provincial People's Committees are the most important state agencies which supervise the activities of the CSOs in this way.³²² Yet, it can also be said that through their activities, especially their professional work in a few instances, CSOs supervise the state agencies and other entities and propose recommendations when necessary. For instance, the Trade Union are eligible social organisations which supervise the implementation of wage scales, labour standards, and the labour regulations of the state agencies and other organisations. In necessary instances, the Trade Union even have the right to represent workers and workers' collectives by suing at court with regard to the legal and legitimate rights and interests of workers and workers' collectives.³²³

³²¹ Ibid, Article 24.

³²² Ibid, Articles 37 and Article 38.

³²³ Article 10, Law on Trade Union No. 12/2012/QH13, dated 20 June 2012.

The value of participation in the legislative process is reflected in the role and position of CSOs in the consultation, judgement, and social evaluation processes of the policies of the state and is recognised in Decree No.45/2010/ND-CP.³²⁴ On this legal basis, in each province, the Mayor of the People's Committee issues a Decision to establish fundamental principles in order to regulate cooperation between the local government agencies and associations. For instance, Decision No. 02/2013/QD-UBND of the Mayor of the People's Committee of Quang Ngai province has a section which provides for the duties of the local government agencies and CSOs.³²⁵ Accordingly, the local government agencies have to provide associations with all of the relevant information about the policies, legal regulations, and working schedules linked to the development of the province in order to facilitate the participation and contribution of associations to such development. Moreover, local government also has an obligation to receive and process opinions from associations about legal regulations and to develop the policies of the province. Viewed from this perspective, the feature of the independence of CSOs is shown clearly. CSOs have the right to deliver opinions and recommendations as independent consultants and social evaluation entities to the process of forming and issuing legal regulations, development, and policy at both central and local levels.

Next, as a corollary of the development of Vietnam under '*Doi Moi*',³²⁶ a fourth group of CSOs has been developing, namely the Non-governmental Funds in the fields of humanitarianism, charity, and social cultural promotion. This group is now established and is making a remarkable impact on society in Vietnam. 'Funds', in the sense of social associations, are recognised as organisations which operate on a not-for-profit basis for the purpose of supporting and promoting the development of culture, education, health care,

³²⁴ Article 34, Decree No. 45/2010/ND-CP, dated 21 April 2010.

³²⁵ Section 2, Article 1, Decision No. 02/2013/QD-UBND of the Mayor of the People's Committee of Quang Ngai province, dated 9 January 2013.

³²⁶ '*Doi Moi*' is a term which refers to the renovation and policy reform period in Vietnam after 1986.

physical training, sports, science, and charitable and humanitarian activities together with community development³²⁷ throughout Vietnam or in certain areas. In accordance with Decree No. 30/2012/ND-CP, Funds in Vietnam can be understood to consist of three main types of organisation: non-governmental organisations which are established from certain assets voluntarily donated by individuals or established under a contract or testament or through a donation; social funds which are organised and operated on a not-for-profit basis for the principal purpose of supporting and promoting the development of culture, education, health care, physical training, sports, and science, and for community development purposes; and charity funds which are organised and operated on a not-for-profit basis for the principal purpose of supporting remedial action for difficulties caused by natural disasters, fires, or serious incidents, and supporting medical patients and other disadvantaged persons in need of social assistance.

The pattern in the agricultural areas of Vietnam is for Funds which are small and from private funding sources which are managed by those who donate the money. However, the Funds which are mentioned in this section are well-structured and well-managed organisations with Fund Management Councils which decide upon and exercise a Fund's rights and undertake a Fund's obligations. A Fund Director administers and manages a Fund's operations and observes the spending limits of the Fund in accordance with the Fund Management Council's resolutions, the Fund's charter, and the law. A Fund's accounting manager assists the Fund's director in organising and implementing the Fund's accounting and statistical work. A Fund's Control Board inspects and supervises the operation of the Fund in accordance with its charter and the law, and reports and proposes to the Fund Management Council on the inspection and supervision results and the financial status of the Fund.

³²⁷ Article 2, Decree No. 30/2012/ND-CP of the Government on the Organisation and Operation of Social Funds and Charity Funds, dated 12 April 2012.

With regard to NGOs, foreign NGOs are allowed to be established and to conduct their activities in the same category as domestic NGOs in Vietnam in accordance with Decision No. 340/TTg of the Prime Minister.³²⁸ Domestic and foreign NGOs have made a significant contribution to the development of Vietnam in many aspects, especially humanitarian, development, and policymaking and can be considered as a part of the research. The Vietnamese Red Cross can be taken as an example of a domestic NGO which was established for the purpose of humanitarianism and contributes to the goal of building a prosperous country and enhancing social justice, democracy, and the happiness of people. The Vietnamese Red Cross operates under certain fundamental principles of the Red Cross movement: humanity; impartiality regardless of ethnicity, race, religion, class, and politics; neutrality, without showing any favour to any side in a conflict of politics, race, religion, or ideals; independence; the importance of working on a voluntary basis; and universality.³²⁹ As a domestic NGO, the Vietnamese Red Cross has a right to determine its own working plan based on its aims and on the scope of its operation in five fields: emergency relief and humanitarian assistance; health care based on community assistance; blood, tissue, organ, and body donation; the propagation of humanitarian values; and participation in the prevention of disasters. The Vietnamese Red Cross has become one of the leading Vietnamese NGOs and has a strong effect on nationwide humanitarian activities.³³⁰ At present, domestic NGOs in Vietnam mainly work in the humanitarian field rather than the fields of religion and political rights. The reason is not disclosed in any public documents, either in the reports of the Vietnamese government or the reports of NGOs.

³²⁸ Decision No. 340/TTg of the Prime Minister on the Operation of Foreign Non-governmental Organisations in Vietnam, dated 24 May 1996.

³²⁹ Article 1 of the Statue of the Vietnamese Red Cross, enacted in accordance with Decision No. 33/QD-BNV of the Ministry of Home Affairs, dated 14 January 2008.

³³⁰ Sections III and IV of the strategy to develop the Vietnamese Red Cross to 2020, enacted in accordance with Decision No. 14/QD-TUHCTDVN, dated 12 January 2011.

In order to lay a legal foundation for the establishment and recognition of the concept of Associations in general and CSOs, on 12 November 2015, the government presented the Bill on Associations to National Assembly term XIII after taking into account the need to have a law to recognise and regulate the activities of social associations, the need to implement Article 25 of the Vietnamese Constitution 2013³³¹ about the right to association of the people, and the need to establish a legal foundation for the position and activities of CSOs. The requirement for a Law on Associations grew because the number of associations up to December 2014 had reached 52,565.³³² There were also issues about the practice of the establishment and operation of associations in Vietnam which were beyond the framework of Decree No. 45/2010/ND-CP. For instance, the establishment and operation of religious associations and sanctions on associations.³³³

On 26 November 2015, the Bill on Associations was discussed at the plenary session of the National Assembly. However, the Bill received many critical opinions on how it should be shaped, the category of organisations which should be governed, and the legal status of the organisations. Therefore, the Bill was sent back to the Bill team for further research. The Bill can be reconsidered in the next plenary session of the National Assembly in December 2016 or later. When the Bill on Associations is passed, it will provide a clearer legal framework for the establishment and operation of associations. However, in order to have a comprehensive Bill, it should receive more consultation from the public, especially CSOs. Participation in the drafting process of the Bill on Associations is also a good chance for CSOs to raise their voices.

From 2005 to 2015, the Vietnamese Union of Scientific and Technical Associations (VUSTA) organised conferences to gather a collective voice

³³¹ Vietnamese Constitution 2013, dated 28 November 2013.

³³² The Report of Government on the Bill on Associations to the National Assembly, dated 12 November 2015.

³³³ Ibid.

from other organisations and push forward the plan to draft the Bill on Associations. For instance, the conference on the Law on Associations on 28 October 2005, hosted by VUSTA, was attended by various CSOs, namely the Vietnamese Fine Arts Association, the Vietnamese Musicians' Association, the Vietnamese Cinematographers' Association, the Vietnamese Folk Music Association, the Vietnamese Photographers' Association, the Vietnamese Theatre Artists' Association, and the Vietnamese Architects' Association. In 2015, before the Bill on Associations was presented to the National Assembly, VUSTA organised three workshops about the Bill on 16 June, 29 September, and 4 November 2015.

The workshops received the attention and opinions of a number of researchers, legal consultants, and organisations such as the Vietnamese Lawyers' Association, the Community Counselling and Support Centre Phap Bao, the Community Support Centre Sunflower, the Social Science and History Association, and the Vietnamese Chamber of Commerce and Industry (VCCI). The outcomes of the conference and workshops of CSOs were not reflected clearly in the Report of the Government to the National Assembly on the Bill on Associations;³³⁴ and, the Bill was still delayed. However, the active participation and efforts of the public and CSOs in shaping the Bill on Associations are encouraging signals for the enhancement of the participation of CSOs in the law-making process.

According to the Bill which is currently on the table of the National Assembly, some issues related to the research which are expected to be addressed are: the definition of associations, their legal status, financial sources for associations, the relation between the state and associations, and the independence of associations. However, three important points is not

³³⁴ In the Report of the Government on the Bill on Associations to the National Assembly, dated 12 November 2015, there is only one sentence on page 4 which mentions the social organisations: 'The Bill was [developed] in consultation with some organisations at central and local levels.' No specific names of organisations or conferences were mentioned.

included in the Law. In this regard, this present research can make its contribution to future regulations with regard to the definition of CSOs, how to recognise a CSO by its features, and the concept of CSOs in the context of the significant concept of all of the associations in Vietnam. The position of CSOs can then be established in the legal system.

2.3.2 The concept of civil society organisations in the United Kingdom

Given its long development history of democracy and civil society, the UK has a stable system of CSOs with numerous organisations and diverse activities. In general, the CSO system includes a very wide range of institutions, which include non-governmental organisations, faith-based institutions, community groups, professional associations, trade unions, media organisations, research institutes, and think tanks.³³⁵ However, this range is too broad in accordance with the proposed definition of CSOs of this thesis. Therefore, the system of CSOs which is suggested by the Office for Civil Society in the Cabinet Office seems more appropriate. Accordingly, there are two main groups of associations classified as CSOs in the UK. These are charities, including voluntary organisations, and social enterprises, which are established to help people improve their lives and communities and make a significant contribution to economic growth and better public services.³³⁶ This approach is also appropriate and relevant to the concept of CSOs in Vietnam; therefore, the research has adopted this view for analysing the concept of CSOs in the UK.

³³⁵ Pollard. A. and Court, J., Working paper 249 of the research 'How civil society organisations use evidence to influence policy processes: a literature review', Overseas Development Institute, (London, July 2005).

³³⁶ Policy: Making it easier to set up and run a charity, social enterprise, or voluntary organisation, Cabinet Office <<https://www.gov.uk/government/policies/making-it-easier-to-set-up-and-run-a-charity-social-enterprise-or-voluntary-organisation>>, accessed 20 February 2014.

Of the two types of CSO group in the UK, charities seem the most popular with a very impressive number of organisations working throughout the country. A charity is defined as ‘an institution which is established for charitable purposes only, and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities’.³³⁷ Up to 2011, there were over 162,000 active organisations in the UK, which means that in the UK there are 2.6 voluntary organisations for every thousand people. This is equivalent to one voluntary organisation for every 389 people.³³⁸ Moreover, the number of charities keeps increasing and rose to 165,290 organisations by 31 December 2015.³³⁹ Charity organisations are defined and regulated in accordance with the Charities Act 2011,³⁴⁰ the Charities and Trustee Investment (Scotland) Act 2005, and the Charities Act (Northern Ireland) 2008. Meanwhile the regulation in Vietnam about charitable purposes is open and abstract that are in order to assist people, promote public welfare, and contribute to the socio-economic development of the country as analysis in section 2.3.1, the common purposes of charities in the UK are concretely defined as the prevention or relief of poverty; the advancement of education; the advancement of religion; the advancement of health and the saving of lives; the advancement of citizenship and community development; the advancement of the arts, culture, heritage, and science; the advancement of amateur sport; the advancement of human rights, conflict resolution, and reconciliation, and the promotion of religious and racial harmony, and equality and diversity; the advancement of environmental protection and improvement; the relief of those in need because of youth, age, ill-health,

³³⁷ Section 1, Charities Act 2011.

³³⁸ National Statistics: business population estimates 2010 to 2012, <<https://www.gov.uk/government/publications/bis-business-population-estimates>>, dated 20 February 2014.

³³⁹ Charities Register Statistics <<https://www.gov.uk/government/publications/charity-register-statistics/recent-charity-register-statistics-charity-commission>>, accessed 12 March 2016.

³⁴⁰ The Charities Act 2011 provides the legal and regulatory framework for charities in England and Wales.

disability, financial hardship, and other disadvantages; the advancement of animal welfare; and the promotion of the efficiency of the armed forces of the Crown and of the efficiency of the police, fire and rescue services and ambulance services.³⁴¹

Charities in the UK are generally requested to register³⁴² with the corresponding agency: the Charity Commission in England and Wales, the Office of the Scottish Charity Regulator in Scotland, and the Charity Commission for Northern Ireland. However, charities still achieve independent status in the determination of their annual working plans. The register merely links to the provision of assurance that the activities of charities are transparent and accountable to the public.³⁴³ Therefore, charities in the UK also satisfy the features of CSOs which are proposed in section 1.4.1 and are a crucial group which this thesis studies and examines in the fieldwork and in the conclusion part.

The second group of CSOs in the UK involves social enterprise. Social enterprises are regarded as special organisations which may be categorised as innovative responses to the funding problem of non-profit organisations.³⁴⁴ They are businesses, nevertheless, with primarily social objectives, and the

³⁴¹ Section 3 of the Charities Act 2011 and Section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005.

³⁴² Charities in the UK are generally requested to register except a charity which for the time being is permanently or temporarily excepted by order of the Commission, and whose gross income does not exceed £5,000 or £100,000 depending upon the exemption condition in accordance with the provision of Section 30 of the Charities Act 2011.

³⁴³ Regulation of Charities,
<http://www.charitycommissionni.org.uk/About_us/Regulation/Registering_charities_index.aspx>, accessed on 20 February 2014.

³⁴⁴ Defourny, J. and Nyssens, M., 'Defining social enterprise' in *Social Enterprise: At the Crossroads of Market, Public Policies, and Civil Society*, (Abingdon: Routledge, 2006): 4.

major part of their income is reinvested for the purposes of these objectives in the businesses or community, rather than being paid to shareholders and owners.³⁴⁵ The element of ‘being social’ of social enterprises is expressed through their four core characteristics.³⁴⁶ Firstly, there is a minimum amount of paid work; almost all of the workers are volunteers and require minimal paid work. Secondly, the clear aim of social enterprises is to dedicate themselves to public welfare and the community. The promotion of a sense of social responsibility is also a common purpose. Thirdly, decision-making power is not based on capital ownership but refers to the principle of the equal vote; or at least, ultimate decisions are not made based on the share of capital or any external interference. Fourthly, a limited profit distribution rule is strictly applied to avoid profit-maximising behaviour. Most of the profits are reinvested. These characteristics make social enterprises distinct from other profit-based businesses. Of registered charities, 45% are social enterprises.³⁴⁷ The core characteristics and general activities of social enterprises are similar to the Funds in Vietnam. Both work for public welfare and non-profit purposes although their outward appearance is business-related. Further, most of the profits of both types are reinvested in the organisations. Therefore, the activities and working experiences from social enterprises can bring lessons to Vietnamese Funds. For example, an organisation can have income and be established as a business; however, the business is run on the basis of using volunteers with minimal paid work, with the major part of the income reinvested for social purposes.

³⁴⁵ What is the relationship between the social enterprise and civil society,

<<http://data.ncvo.org.uk/a/almanac12/what-is-the-relationship-between-social-enterprise-and-civil-society/>>, accessed 20 February 2014.

³⁴⁶ Defourny, J. and Borzaga, C., *The Emergence of Social Enterprise* (London: Routledge, 2001): 16–18.

³⁴⁷ Result of the National Survey of Charities and Social Enterprises in 2010 of the Office for Civil Society of the Cabinet Office, <<http://data.ncvo.org.uk/a/almanac12/what-is-the-relationship-between-social-enterprise-and-civil-society/>>, accessed 20 February 2014.

The high level of independence of social enterprises is another crucial point which contributes to the recognition of social enterprises as CSOs in accordance with the proposed definition of this thesis. Social enterprises are established voluntarily in the framework of an autonomous project in accordance with a business structure within a limited company, charity, charitable incorporated organisation, cooperative, industrial and provident society, sole trader, or business partnership.³⁴⁸ Therefore, even when social enterprises receive public subsidies or funds, they are not directly or indirectly managed by the State or other organisations because they have the right to establish their position and terminate their activities.³⁴⁹

CSOs in Vietnam and the UK share the circumstance that they can receive public subsidies or funds from outsiders but can retain their independence in planning their major work schedules. However, CSOs in the UK have an advantage in that they can make themselves more 'marketable' so that they can raise funds more easily with a minimal amount of paid work. This can be a lesson that Vietnam should take into account when establishing a legal framework for recognising the CSO system and regulating the activities of CSOs is a necessity.

2.4 Conclusion

Chapter 2 has analysed four important values of legislation: efficiency and effectiveness (taken together), fairness, democracy, and participation. The values of legislation are additional to the principles of legislation and fulfil the law-making process with further actions which are worthy and teleological to pursue. Some impacts which the values of legislation can make are a more open approach to information, the opportunity of participation for the

³⁴⁸ Setting up a social enterprise <<https://www.gov.uk/set-up-a-social-enterprise>>, accessed 21 February 2014.

³⁴⁹ Defourny, J. and Borzaga, C., *The Emergence of Social Enterprise*, (London: Routledge, 2001): 14.

public and CSOs in the law-making process, and the requirement that legislators and supporters, including CSOs, must work towards the targets of the 'instant benefit' and 'sustainable growth' of legislation. Considering the values of the law-making process is also an original point of this thesis because current research on the law-making process in Vietnam mainly focuses on the principles of the law-making process rather than the values. The values of legislation are also the factors that can be recognised and transferred between the different legal systems. Furthermore, considering the values of legislation in the law-making process can contribute to the enhancement of quality and quantity of laws as the analysis in section 2.2 and partially answer the first and second thesis questions.

Concentrating the purpose of providing the background and concepts of the thesis, Chapter 2 has also analysed the social organisation systems in Vietnam with some reference to the UK in order to propose a concept of CSOs in the two countries. The research into the equivalent concepts of CSOs for Vietnam is based on the common theoretical ground of the proposed definition of CSOs in Chapter 1. The research helps to develop an understanding about the general concept of CSOs, from which Vietnam can draw relevant lessons. Identifying the concept of CSOs is an important task of this thesis and links the proposed definition of CSOs with analyses about the participation of CSOs in the law-making process. Some differences in the concepts of CSOs in the two countries have highlighted certain implications for each country. For example, the concept of CSOs in Vietnam has a much closer relation with political issues, especially, with regard to the CSOs which are social-political organisations. The concept of CSOs in the UK focuses more on the voluntary aspect of CSOs. CSOs in the UK are also more 'marketable' than CSOs in Vietnam, especially social enterprises. The structure of CSOs in the UK makes it easier for the organisations to raise funds and therefore obtain independence. The experience of the UK in drafting the Charities Act 2011 presents a good lesson for Vietnam with regard to the process of drafting its Law on Associations.

CHAPTER 3: THE CURRENT CONTEXT OF LAW-MAKING IN VIETNAM WITH REFERENCE TO THE UNITED KINGDOM AND THE POTENTIAL IMPACT OF CSOs ON THE LAW-DRAFTING PROCESS

3.1 Introduction

In order to explore the dynamic aspects of the participation of CSOs in the law-making process, Chapter 3 undertakes a critical view of the current context of law-making in Vietnam and with some reference to the UK and the potential impact of CSOs on the law-making process. This analysis provides background information for the case studies of Chapters 4 and 5 and for the conclusion. It also identifies and analyses the impact of CSOs on the law-making process from the pre-legislative stage to the post-legislative stage. In-depth studies of the participation of CSOs in the law-making process are further analysed in the case studies in Chapters 4 and 5.

3.2 The current context of law-making in Vietnam and the United Kingdom, and the participation of CSOs in the law-making process

3.2.1 The current context of law-making in Vietnam and the participation of CSOs in the law-making process

Since the '*Doi Moi*' (renovation) policy in 1986, the Vietnamese legal system has changed remarkably. Starting from the point that there were almost no laws and regulations suitable for a market economy in 1985, Vietnam has gradually transformed itself to create a more comprehensive and accessible legal system.³⁵⁰ Therefore, law-making was put into a context whereby it needed to be reformed in order to enhance the quantity and quality of laws in Vietnam. In addition, Vietnam is more actively participating in international activities and has become a signatory of many international

³⁵⁰ Dang, X.H., 'The past 25 years, the present and the future' in *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, Black, E.A. and Bell, G.F. (eds) (New York: Cambridge University Press, 2011): 186.

legal documents. For example, in 2007, Vietnam became a member of the World Trade Organization (WTO), which required Vietnam to ratify many international treaties regarding trade, investment, and other economic activities.³⁵¹ Participating actively in international legal instruments requires Vietnam to improve its legal system and encourages the improvement of law-making techniques so that the country matches itself to global requirements. Especially in the context that where a treaty to which the Socialist Republic of Vietnam is a party contains different provisions on the same matter to those of Vietnam's legal documents, the provisions of the treaty shall prevail,³⁵² although the law needs to be reformed.

Nevertheless, the main motivation for reforming the legal system and the law-making process in Vietnam comes from internal demand. Over a decade ago, in 2002, President Tran Duc Luong confirmed the need to reform and appealed for cooperation as well as participation among all classes of society with regard to judicial and legal reform.³⁵³ President Tran Duc Luong highlighted two crucial missions for legal reform, which are to enhance the capacity of the juridical entities and to improve the legal system. The latter includes enhancing the quality and quantity of law in order to the make the Normative Acts system more systematic and comprehensive.

As a follow-up action, on 25 May 2005, Resolution No. 48-NQ/TW on Judicial Reform Strategies up to 2020 was issued in order to lay the foundation for the improvement of legislation and the law-making process. Accordingly, the implementation of the request to strengthen the capacity of

³⁵¹ Resolution No. 71/2006/NQ-QH11 of the National Assembly on Ratifying the Protocol of Accession of the Socialist Republic of Vietnam to the Agreement Establishing the World Trade Organisation, dated 29 November 2006.

³⁵² Article 6, Law on the Conclusion, Accession to and Implementation of Treaties, No. 41/2005/QH11, 14 June 2005.

³⁵³ Tran, D.L., President of the Socialist Republic of Vietnam, *Enhancing judicial reform to meet the demands of building the state law of Vietnam*, Communist Review, Vol. 11, (2002).

the Drafting Committee and reform the methodology for making the law,³⁵⁴ especially by enhancing the participation of people and civil organisations in the process, was urged.³⁵⁵ After three years of implementing Resolution No. 48-NQ/TW, the quality and quantity of the Laws and Ordinances were improved. Significantly, the Civil Code 2005 has conveyed targets to which the Resolution aimed, particularly in the field of protecting the lawful rights of individuals and organisations in civil transactions. Compared with the previous Civil Code 1995, the Civil Code 2005 has promoted forty-six new provisions in accordance with the legal reform goals in the integrated period which relate to asset possession, ownership rights, civil contracts, intellectual possession, technology transfer, and civil transactions with the involvement of foreign elements.³⁵⁶

Based on the policy of reforming the law-making process, certain other changes were adopted to improve the quality and quantity of the laws. Firstly, the law-making process was improved by the amendment of the Law on the Promulgation of Legal Documents in 2008³⁵⁷ and in 2015.³⁵⁸ This

³⁵⁴ Section 1.3 (II) of Resolution No. 48-NQ/TW of the Central Committee of the Vietnamese Communist Party on the strategy for building and improving the Vietnamese legislation system to 2010 and with a view to 2020, dated 24 May 2005.

³⁵⁵ Tham, N.V., Administrative reform in Vietnam: achievements and current obstacles,

<http://www.hids.hochiminhcity.gov.vn/c/document_library/get_file?uuid=8a731b44-ce5b-4781-85df-377d12de82ed&groupId=13025>, accessed 3 June 2014.

³⁵⁶ Dr D.L. Nguyen, Head of Department of Law and Juridical Reform, The Party Office, Some achievements after three years of implementing the juridical reform strategy,

<http://www.moj.gov.vn/htpl/ttc/Lists/TinhHinhTrienKhaiChienLuoc/View_Detail.aspx?ItemID=25>, accessed 28 July, 2014.

³⁵⁷ The Law on the Promulgation of Legal Documents No. 02/2002/QH11, dated 16 December 2002, amended by the Law on the Promulgation of Legal Documents No. 17/2008/QH12, dated 3 June 2008.

³⁵⁸ The Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

amendment of the law has made the law-making process clearer with an estimated time for each stage and specific requirements for documents for submission at the end of each stage. Secondly, the human factor was also a concern from the parliamentary perspective because laws cannot be changed by themselves but require skilled legislators. The number of full-time members of the National Assembly has gradually increased from 2001 to the present. 'Reforming the activity of the National Assembly and heading towards professional work with more full-time National Assembly members' was an official direction of the General Secretary of the Central Committee of the Communist Party in 1991.³⁵⁹ The direction was later transferred to the provision of the Law on the Organisation of the National Assembly in 1991 whereby the National Assembly requires to have at least 25% full-time members in the National Assembly,³⁶⁰ and especially in the Law on the Organisation of the National Assembly in 2014, the National Assembly is required to have at least 35% full-time members.³⁶¹

Accordingly, the number of full-time members of the National Assembly was significantly raised from 5.31% in term IX of the National Assembly (1992–1997) to 7.7% in term X (1997–2002), 23.69% in term XI (2002–2007), 27.99% in term XII (2007–2011), and 30% in term XIII (2011–2015). However, aiming to create a more professional and more effective working profile of the National Assembly through legislation, the National Assembly now plans to increase the number of full-time National Assembly members from 25% to 35%. This plan was approved in the 7th meeting

³⁵⁹ Do Muoi, General Secretary of the Central Committee of the Communist Party, *Reforming State Regulations and Renovating the Leading Role of the Communist Party for the State with regard to Building a Stable Country for People, of the People, and by the People* (Hanoi: National Politics Publishing, 1998): 16.

³⁶⁰ Article 45 of the Law on the Organisation of the National Assembly No. 30/2011/QH10, dated 25 December 2001.

³⁶¹ Article 23 of the Law on the Organisation of the National Assembly No. 57/2014/QH13, dated 20 November 2014.

session of term XIII on 11 June 2014³⁶² and will be transferred to Article 41 regulating the activities of full-time members of the National Assembly in the Amendment of the Law on the Organisation of the National Assembly, which was expected to be enacted in the 8th meeting of National Assembly term XIII. Having more full-time National Assembly members is one of the expressions of the determination to improve the quality and quantity of the laws of the National Assembly.

Nevertheless, the quality of the working time and the professional working style of the members of the National Assembly have not apparently improved. The working time of the members of the National Assembly is based on the working sessions of the National Assembly and the working times of the local delegation of members of the National Assembly. The local delegation of members of the National Assembly is a specific committee of members of the National Assembly in Vietnam which was formed by all of the members of the National Assembly in each constituency. The local delegations of members of the National Assembly are regulated by the Rule of the Activities of Members of the National Assembly and the Local Delegations of Members of the National Assembly.³⁶³ Accordingly, each committee consists of a chair, a vice-chair, and other members.³⁶⁴ The committee also has an office with an administrative system and budget in accordance with the provisions of the Standing Committee of the National Assembly.³⁶⁵ The duties of local delegations are to cooperate with the Vietnam Fatherland Front, the Standing Committee of the People's Council, and the People's Committees in order to organise the meetings between the

³⁶² The outcome of the 7 Resolution 48-NQ-TWth meeting session of National Assembly term XIII,

<<http://www.na.gov.vn/htx/Vietnamese/C2186/default.asp?Newid=73219>>, accessed 12 June 2014.

³⁶³ The Rule on the Activities of Members of the National Assembly and Local Delegations of Members of the National Assembly, associated with Resolution No. 08/2002/QH11 of National Assembly term XI.

³⁶⁴ *Ibid*, Article 23.

³⁶⁵ *Ibid*, Article 45.

members of the National Assembly and local residents to receive public opinions; organise the debate section to enable members of local delegations to discuss a bill; organise the programme of the meeting section of the National Assembly prior to the official meetings of the National Assembly; and supervise the implementation of Normative Acts in constituencies.³⁶⁶

In the Law on the Organisation of the National Assembly in 2001,³⁶⁷ the Law on the Amendment of the Law on the Organisation of the National Assembly in 2007,³⁶⁸ and the Law on the Organisation of the National Assembly in 2014,³⁶⁹ the working sessions of the members of the National Assembly were provided for with a specification of two working sessions each year during the term.³⁷⁰ The first session starts on 20 May, the second session starts on 20 October annually, and the duration of each session is one month.³⁷¹ Further, the Regulation on the Activities of the Members of the National Assembly and the Local Delegations of Members of the National Assembly provides an additional working time whereby the members of the National Assembly have an obligation to arrange the time for regular meetings with their voters in the constituencies where they vote and to participate in the meetings and preparation of the Local Delegations of Members of the National Assembly at least 20 days prior to the commencement of the working sessions of the National Assembly.³⁷²

³⁶⁶ Ibid, Article 24.

³⁶⁷ The Law on the Organisation of the National Assembly 2001, No. 30/2001/QH10, dated 25 December 2001.

³⁶⁸ The Law on the Amendment of the Law on the Organisation of the National Assembly 2007, No. 83/2007/QH11, dated 2 April 2007.

³⁶⁹ Law on the Organisation of the National Assembly No.57/2014/QH13, dated 20 November 2014.

³⁷⁰ Article 62 of the Law on the Organisation of the National Assembly 2001, Article 62 of the Law on the Amendment of the Law on the Organisation of the National Assembly 2007 and Article 90 of the Law on the Organisation of the National Assembly 2014.

³⁷¹ Working session of the National Assembly, <<http://hoidap.quochoi.vn/about-us.aspx>>, accessed 29 July 2014.

³⁷² Articles 24 and 29 of the Regulation on the Activities of the Members of the National Assembly and the Local Delegations of Members of the National Assembly,

Therefore, except for the full-time members of the National Assembly who are, in principle, spending 100% of their working time on parliamentary duties, the part-time members essentially spend only 140 full-time days per year on the activities of the National Assembly. These days consist of sixty days for two working sessions of the National Assembly, forty days for discussions with the Local Delegations of Members of the National Assembly, and forty days for meetings with voters.

This system of working regulations and working time has been running for more than twenty years from 1993 and lays down a relatively heavy burden on the full-time members of the National Assembly in terms of preparing and reviewing bills.³⁷³ Thus, in order to improve the quality and quantity of the laws, the National Assembly not only needs more full-time members but also needs to create a more professional community of members of the National Assembly through a concrete education and training plan. This plan can prompt full-time and part-time members to increase their current working capacity limits and be more professional members of the National Assembly. Accordingly, the members of the National Assembly, especially the full-time members, should be required to improve parliamentary skills such as the skill of communication, the skills of systematising and drafting a legal proposal, and the skill of debating and thereby improve their detailed understanding of the law-making process and activities of the National Assembly.³⁷⁴

The status quo of the legislation in Vietnam should be that the professional legislators provide a good opportunity for the public and CSOs to participate in the law-making process. Four groups of CSOs in Vietnam

adopted with Resolution No. 08/2002/QH11 of the National Assembly, dated 16 December 2002.

³⁷³ Fieldwork, Interviewee A2.

³⁷⁴ Dr S.D. Nguyen, Vice-chairman of the National Assembly Office, *Full-time or Professional Members of the National Assembly*, The Legislation Review Vol. 3, (2003).

that were mentioned in section 2.3.1, through their working experience and potential impact on the law-making process, can provide expert views or advice for the public and legislators. One of the indicators of the effectiveness of the work of the members of the National Assembly is the communication channel between the members and the public. This is the next issue of the current context of the law-making process. An open communication channel would assist the members of the National Assembly with the receipt of diverse and prompt opinions from the public. However, in Vietnam, the contact details of the members of the National Assembly are not widely published. Currently, the two official channels where information about the members of the National Assembly is published are the website of the National Assembly³⁷⁵ and the websites of the Local Delegations of Members of the National Assembly. Even so, the public cannot even find concrete contact details for the members of the National Assembly. For example, the section of information about members of the National Assembly on the website of the National Assembly displays a full list of the members with their personal information such as full names, dates of birth, working positions, and education histories but not their contact details.³⁷⁶

The same problem also applies to the official websites of the Local Delegation of Members of the National Assembly. At the website of the Local Delegation of Members of the National Assembly of the capital Hanoi, for example, the list of members of the local delegation is provided with personal information except for contact details.³⁷⁷ At the website of the Local Delegation of Members of the National Assembly in Ho Chi Minh City, one of

³⁷⁵ The list of members of the National Assembly

<<http://quochoi.vn/hoatdongdbqh/Pages/default.aspx>>, accessed 15 September 2014.

³⁷⁶ National Assembly, <<http://dbqh.na.gov.vn/XIII/Daibieu.aspx>>, accessed 15 September 2014.

³⁷⁷ The local delegation of members of the National Assembly in Hanoi, <<http://www.dbndhanoi.gov.vn/Default.aspx?tabid=255>>, accessed 15 September 2014.

the two biggest cities in Vietnam, even the list of members is not provided.³⁷⁸ This issue causes problems for the connection between the members of the National Assembly and the public. It may be claimed that most of the members of the National Assembly at the local level are part-time members; hence, the public can contact them through their daily work places. However, creating a convenient method for the public to contact the members of the National Assembly by publishing contact details in a systematic method through official websites and other public publications of the National Assembly and local delegations should be a duty of all members of the National Assembly. This is because it is sometimes difficult for lay people to search for accurate contact details of the members of the National Assembly in their province.

Approaching this issue from the angle of the current context of the law-making process in Vietnam, the development of information technology and the internet is an element which could significantly contribute to the communication system between the legislators and the CSOs and the improvement of the law-making process from the pre-legislative to the post-legislative stage. The contribution of information technology to the law-making process is relevant in two aspects: at the drafting process and at the post-legislation stage.

In the drafting process in the late 1980s, there were relatively few instruments to support the law-making process. The limited number of hard copies of drafting documents did not significantly encourage and facilitate the participation of the public in the legislation because the copies of each Bill were mostly sent to the relevant authorities to ask for comments.³⁷⁹ However,

³⁷⁸ The local delegation of members of the National Assembly in Ho Chi Minh City, <<http://www.dbnd.hochiminhcity.gov.vn/web/guest/113>>, accessed 15 September 2014.

³⁷⁹ Dang, X.H., 'The past 25 years, the present and the future' in *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, Black, E.A. and Bell, G.F. (eds) (New York: Cambridge University Press, 2011): 187.

at present, the development of the internet and information technology is creating diverse electronic sources which are easier for the public to access and enables them to give their opinions about proposed legislation at any drafting stage,³⁸⁰ therefore, enhance the communication channel between the legislator and the public. Ensuring public consultation when drafting law and ensuring the transparency of the provisions in legal documents are issues which are also recognized in the Law on the Promulgation of Legal Documents.³⁸¹ The Law states that the draft of a proposed law should be published on the website of the National Assembly to encourage public consultation.³⁸² At the post-legislation stage, the wide use of electronic documents on the internet has also contributed to the general knowledge of laws, and therefore makes people more informed about what the law has provided. Regarding the application of information technology in the current context of law-making in Vietnam, the National Assembly Office, by implementing the provisions of the Law on the Promulgation of Legal Documents on 22 February 2012, has launched an online law-drafting website as a sub-website of the National Assembly website in order to present all the drafts of proposed laws to the public.³⁸³

In addition, the drafts of laws are normally also published on the website of the government and the websites of relevant ministries to enable greater public input. For example, the Investment Bill was published on the

³⁸⁰ The launching of internet broadband (ADSL) in Vietnam in 2003 has been considered a milestone of internet development in Vietnam, according to the report of the Ministry of Information and Communication at the meeting of the 15-year establishment of the internet in Vietnam,

<<http://mic.gov.vn/tintucsukien/tintuctrongnganh/Trang/K%E1%BB%B7ni%E1%BB%87m15n%C4%83mInternetch%C3%ADnhth%E1%BB%A9cv%C3%A0oVi%E1%BB%87tNam.aspx>>, accessed 11 June 2014.

³⁸¹ Article 6, Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

³⁸² *Ibid*, Article 73.

³⁸³ The online law drafting website at <<http://duthaonline.quochoi.vn/Pages/default.aspx>

website of the National Assembly,³⁸⁴ the website of the government³⁸⁵ and the website of the Ministry of Planning and Investment³⁸⁶ in order to receive public opinions.

At present, all eighteen ministries and four ministerial-level agencies in Vietnam have websites as sub-websites within the governmental portal.³⁸⁷ However, the content of the website of each ministry is still limited with three main headings: the introduction of the ministry, the functions and missions of the ministry, and the organisational structure of the ministry. Three more headings are noted as 'processing': responding to citizens' questions, bureaucracy reform, and legislative discussion. Therefore, these websites of the ministries currently provide information to readers rather than receive feedback or opinions from them.

One point to note is that, in addition to the ministries' websites in the governmental portal, each ministry has established an independent website to interact with citizens. However, the independent websites of ministries to some extent make people, especially those who are not familiar with using the internet, feel unassured. With regard to the Ministry of Justice, for instance, besides the sub-website in the governmental portal,³⁸⁸ the independent website is the main tool for the Ministry of Justice to interact with

³⁸⁴ <http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=524>, accessed 2 August 2014.

³⁸⁵ <http://www.chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=view&_piref135_27935_135_27927_27927.page_id=20>, accessed 2 August 2014.

³⁸⁶ <<http://ipcn.mpi.gov.vn/Home/NewsDetail.aspx?CatId=39&id=596>>, accessed 2 August 2014.

³⁸⁷ Governmental portal, <<http://www.chinhphu.vn/portal/page/portal/chinhphu/trangchu>>, accessed 2 August 2014.

³⁸⁸ <www.chinhphu.vn/portal/page/portal/chinhphu/bonganh/botuphap>, accessed 2 August 2014.

citizens.³⁸⁹ The independent website has more information than its counterpart but only has a section for the comments of people under the simple form of sending emails to the website administrator. However, this feature is not only a problem of the website of the Ministry of Justice but also affects other ministries' websites. The mechanisms and processes to analyse and respond to public opinions regarding the proposed laws published on the official websites of the National Assembly and the government are also still not clearly delineated or yet provided in the Law on the Promulgation of Legal Documents. Thus, lay people and CSOs may not feel encouraged to contribute their opinions about the draft laws. For example, on the online law-drafting website of the National Assembly Office, the Amendment of Housing Law Bill (one of the most familiar laws to Vietnamese people) received only four comments from one lawyer and three readers to the draft out of 7,411 views.³⁹⁰ Further, the Public Investment Law Bill received seventeen public comments out of 11,030 views.³⁹¹ There are also neither responses to the public comments on the website nor technical tools to indicate that the public comments were recognised and put into any process to be transferred to the National Assembly report.

The communication channels between the legislators and the public such as virtual channels, workshops, and seminars have been developing in recent years and the CSOs have made their contributions to the legislation in some successful cases. For instance, the Press Association participated in the process of evaluating the Press Law 1999³⁹² and played a role at the pre-legislative stage for the amendment of the Press Law with the Ministry of Information and Communication. The Trade Union also participated in the

³⁸⁹ <www.moj.gov.vn/en/pages/home.aspx>, accessed 2 August 2014.

³⁹⁰ Housing Law Bill, <http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=807&TabIndex=6>, accessed 11 June 2014.

³⁹¹ The Public Investment Law Bill, <http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=423&TabIndex=0>, accessed 11 June 2014.

³⁹² The Press Law No. 12/199/QH10, dated 12 June 1999.

pre-legislative, legislative, and post-legislative stages of the Law on Trade Union 2012.³⁹³ However, in order to make the most use of the channels, the trust between the two sides should also be increased. Some CSOs feel uncertain that their opinions are truly heard and considered.³⁹⁴ From the stance of CSOs, except when they are invited to participate in the bill team of a particular law, CSOs do not usually have feedback about whether their opinions at the pre-legislative and legislative stages are heard and to what extent their opinions are considered.³⁹⁵ This situation creates a negative feeling about the participation of CSOs in the law-making process. These issues are analysed further in the case studies in Chapters 4 and 5.

Regarding the quantity of laws, as a consequence of the reforms following ‘*Doi Moi*’ the quantity has changed. For example, in 1993, according to the law database of the Ministry of Justice,³⁹⁶ the number of Laws and Ordinances passed by the Vietnamese National Assembly was relatively limited with twenty-five Laws and Ordinances;³⁹⁷ in 2003, the number of Laws and Ordinances passed was again twenty-five; and in 2013, there were eighteen Laws and Ordinances passed, fifteen of which were Laws and three were Ordinances. However, the quantity of law in the whole term has increased remarkably. There were thirty-nine laws and forty-one Ordinances passed in the whole of term IX (1992–1997), with eleven Laws and fourteen Ordinances passed in 1993, especially to regulate some basic legal and social relations. These Laws and Ordinances included the Environmental Protection Law,³⁹⁸ the Law on Amending the Criminal Code,³⁹⁹ the Law on Amending the Law on the Organisation of the People’s

³⁹³ Fieldwork, Interviewee B3.

³⁹⁴ Fieldwork, Interviewees B1 and B2.

³⁹⁵ Fieldwork, Interviewee B4.

³⁹⁶ <<http://www.moj.gov.vn/vbpq/Pages/search.aspx>>, accessed 26 July 2014.

³⁹⁷ The difference between a Law and an Ordinance is explained in Section 1.4.2.

³⁹⁸ The Environmental Protection Law, No. 29-L/CTN, dated 10 January 1994.

³⁹⁹ The Law on Amending the Criminal Code, No. 57-L/CTN, dated 22 May 1997.

Courts,⁴⁰⁰ and the Labour Law.⁴⁰¹ In the whole of term XI of the National Assembly (2002–2007), eighty-four Laws and thirty-four Ordinances were passed. The number of Ordinances reduced compared with the previous period, while the number of Laws increased. Some significant laws were also made in term XI to regulate crucial fields such as the Criminal Procedure Code,⁴⁰² the Land Law,⁴⁰³ the Law on the Organisation of the People's Committee and People's Council,⁴⁰⁴ the Law on National Security,⁴⁰⁵ and the Law on Construction.⁴⁰⁶ In 2013, the most significant law which was made was the Amendment of the Constitution.

There were numerous inputs from the central to the local level which contributed to the development process of the Constitution 2013. In order to amend the constitution, the National Assembly and relevant bodies engaged in a significant implementation workload in order to ensure the national participation of six categories of subjects. These categories were (i) diverse groups of people; (ii) state agencies at central level: the National Assembly Standing Committee, the Ethnic Council, Committees of the National Assembly, agencies of the National Assembly Standing Committee, the government, ministries, ministerial agencies, governmental agencies, the Supreme People's Court, the Supreme People's Procuracy, State Audit, boards of the Party, the Central Office of the Party, and the Office of the State President; (iii) local state agencies: People's Councils, People's Committees, People's Courts, and the People's Procuracy; (iv) the Vietnamese Fatherland Front, socio-political organisations, civil society

⁴⁰⁰ The Law on Amending the Law on the Organisation of the People's Courts, No. 43L/CTN dated 9 November 1995.

⁴⁰¹ The Labour Law, No. 35-L/CTN, dated 5 July 1994.

⁴⁰² The Civil Procedure Code, No. 24/2004/QH11, dated 15 June 2004.

⁴⁰³ The Land Law, No. 13/2003/QH11, dated 10 December 2003.

⁴⁰⁴ The Law on the Organisation of the People's Committee and People's Council, No. 11/2003/QH11, dated 10 December 2003.

⁴⁰⁵ The Law on National Security, No. 32/2004/QH11, dated 14 December 2004.

⁴⁰⁶ The Law on Construction, No. 16/2003/QH11, dated 10 December 2003.

organisations, and other social organisations; (v) institutes, universities, and academies; and (vi) news and press agencies.⁴⁰⁷

The public could deliver their opinions by contributing ideas directly or in writing by sending them to relevant agencies and organisations which were authorised in the Resolution; by discussions in conferences, seminars, public talks, or through the website of the National Assembly; and through the mass media.⁴⁰⁸ In order to implement the Resolution, the Prime Minister issued a Decision and a Plan of the Government to assist the public opinion collection process of the National Assembly. Accordingly, the Government Office, the Ministry of Justice and other Ministries, the provincial People's Councils, and People's Committees were required to organise diverse dissemination programmes and conferences, and to facilitate the contribution of public opinions to the amendment of the Constitution.⁴⁰⁹ The quality of legislation was improved by successfully developing the new Constitution with many important changes and new provisions, especially in the fields of human rights and local authority organisations.

Looking at the whole picture, the quantity of law still fails to meet the demand and general expectations of society because many problems remain because of a lack of regulations. There are many social relations and social issues which have not yet had laws to regulate them. As a consequence of the shortage of laws, governmental-level regulations, and the implementation of legal documents, the authorities and the people have to use alternative documents or other methods, especially 'official letters' and 'analogous law',

⁴⁰⁷ Article 5, the Resolution on the Organisation of the Collection of the Opinions of People for the Draft on Amending the 1992 Constitution of the National Assembly, No. 38/2012/QH13, dated 23 November 2012.

⁴⁰⁸ Article 4, the Resolution on the Organisation of the Collection of the Opinions of People for the Draft on Amending the 1992 Constitution of the National Assembly, No. 38/2012/QH13, dated 23 November 2012.

⁴⁰⁹ Section III, Decision to approve the Plan of Government to assist the amendment process of the National Assembly No. 136/QD9-TTg, dated 11 January 2013.

to resolve legal issues. In general, the application of 'analogous law' is a method of 'extracting' the spirit of the law and flexibly applying it to relatively similar matters which either have not been regulated or foreseen by the state. For example, the application of analogous law has positively contributed to the legal practices in Vietnam whereby fifty-six ethnic minorities are living together with diverse cultures and customs. It has also been recognised in the Civil Procedure Code.⁴¹⁰ Articles 82 and 83 of the Civil Procedure Code provide that acceptance with evidence is practical in civil procedures if this approach is recognised by the local community where such practices exist. For example, child adoption customs and practices (*tuc nhan con nuoi*) of minority ethnic groups in Vietnam are currently regulated in a flexible manner by the application of analogous law under the provisions of the Law of Marriage and the Family⁴¹¹ and Decree No. 32/2002/CD-CP of the government to implement the Law of Marriage and the Family.⁴¹² Child adoption customs are the cultural customs of many minority ethnic groups in the highlands of northern Vietnam.

The people of the La Chi ethnic group, for instance, give a child who is frequently sick to another family to be their adopted child. They believe that being adopted by another family changes the life and fate of the child and enables the child to grow up stronger. In order to find the adopting father and mother, people of the La Chi ethnic group ask a wizard (called *po me nhu*) to represent the child's family in order to consult God to identify a particular family in the village which can help to raise the child. Following the instruction of the *po me nhu*, the child's family goes to the suggested family to ask for a

⁴¹⁰ The Civil Procedure Code, No. 24/2004/QH11, dated 15 June 2004.

⁴¹¹ Article 3, the Law of Marriage and the Family, No. 22/2000/QH10, dated 9 June 2000, provides that adoption policies and measures can create conditions to maintain 'practices related to marriage and family, promote fine traditions, and customs and practices embodying the identity of each nationality; [and] build up progressive marriage and family relations'. This is not only recognised but also provided as the state's and society's responsibilities for marriage and family.

⁴¹² Decree No. 32/2002/CD-CP of the Government to implement the Law of Marriage and the Family, dated 27 March 2002.

bowl of rice to cook the porridge. If the child happily eats the porridge without objection, the child's family takes the child together with a chicken, a costume, and a colour thread to the other family to ask them to become the adopting father and mother of the child. If the family agrees to adopt the child, they accept the chicken, boil it, and dedicate the chicken to an ancestor to announce that the child is their child and a descendant of the clan. The adopting father and mother tie the hand of the child with the colour thread as a symbol of keeping his or her soul with the new family. After the adoption procedure is completed, two families share the duty of nurturing the child.⁴¹³

Although the child adoption customs and practices of the La Chi ethnic group do not fully comply with the child adoption procedure provided in the Civil Code and the Law on Marriage and the Family, they are still accepted by the community as an 'analogous law application'. This is because the spirit of the law is to encourage people to raise children and share the spirit of solidarity and mutual support in the community. This practice matches the regulation of Chapter IV of Decree No. 32/2002/CD-CP of the government to implement the Law of Marriage and the Family. Accordingly, child adoptions can be accepted provided the adopter is at least twenty years older than the adoptee and complies with the ethics and traditions of the community regardless of the detailed procedure.

However, the application of analogous law is not an appropriate model to apply to all social relations, and is mostly applied with regard to marriage and the family and local commercial issues. In criminal and administrative regulations, the application of analogous law is hard to undertake because the laws are required to be clear and to contain specific provisions.⁴¹⁴

⁴¹³ Child adoption customs of the La Chi ethnic group, <<http://www.doisongphapluat.com/dia-phuong/mien-bac/tuc-nhan-cha-me-nuoi-cua-nguoi-la-chi-a47678.html>>, accessed 4 September 2014.

⁴¹⁴ Customary Law – an additional source of the legal system of Vietnam, <<http://daibieunhandan.vn/default.aspx?tabid=81&NewsId=303762>> (Online Legislation Review of the National Assembly), accessed 1 August 2014.

Furthermore, the application of analogous law cannot resolve a dispute between persons who come from different regions with different or conflicting customs or cultural attitudes. Therefore, the application of analogous law cannot be a solution and a common source for the legal system because of the shortage of laws.⁴¹⁵ The state still must enhance the quality and quantity of the laws in order to provide a concrete legal basis to enable the Normative Acts system to regulate social relations. In addition, analogous law is controlled by the courts because it may otherwise be vague and imprecise. Generally, analogous law can be applied under certain conditions, including where these relate to the public interest and the benefit of the country, society, or individuals, and need to be settled by the state. In addition, the authorities must clearly prove that the situation involves a limitation of the law or legal documents.⁴¹⁶

The second alternative method which is used to resolve legal gaps when laws and other implementing documents are lacking is the 'official letter'. An official letter is a document issued as part of the administrative activities of almost all state bodies and organisations in order to present the view of a particular authority on a specific legal matter which is either unclear or needs to have a further explanation. An official letter is used to regulate social relations in many respects. Every week, hundreds of official letters are issued by various governmental authorities to answer enquiries from citizens on how to interpret and/or how to apply unclear legal documents.⁴¹⁷

⁴¹⁵ Using Customary Law is not easy, <<http://daibieunhandan.vn/default.aspx?tabid=81&NewsId=303761>>, accessed 1 August 2014.

⁴¹⁶ Tran, C.L.T., Vice President of Ho Chi Minh City Bar, 'Apply analogous law in civil transactions', <<http://www.hcmcbar.org/NewsDetail.aspx?CatPK=4&NewsPK=314>>, accessed 12 June 2014.

⁴¹⁷ Dang, X.H., 'The past 25 years, the present and the future' in *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, Black, E.A. and Bell, G.F. (eds) (New York: Cambridge University Press, 2011): 196.

The crucial point is that official letters, in principle, are not legal instruments and they are not issued under the strict process of law-making or creating other governmental legal documents. Therefore, official letters do not have an equal legal value with laws and other law-implementing documents such as Decrees of the government or the Circulars of ministers. However, because of the shortage of laws and other equivalent legal documents, official letters sometimes have to take the role of law or other implementing legal documents in practice because they constitute the official opinion of the relevant authorities. For example, official letter No. 1427/CV/DC of the General Department of Land Administration for providing instruction for solving problems and guidance for implementing and conferring the certification of land use⁴¹⁸ does not create either legal rights or obligations for any subjects. The General Department of Land Administration is only a department of the Ministry of Natural Resources and Environment. It was established for the purposes of preparing land legislation and land policies to submit to authorise state bodies for consideration and approval; conducting land investigations and inventories for land classification, land assessment, valuation, and land statistics; and mapping current land use. The General Department of Land Administration is not an authority which can issue law-implementing documents according to the Law on the Promulgation of Legal Documents. However, in practice, official letter No. 1427/CV/DC is legally binding on relevant organisations and people. In cases of dispute, the official letter is not taken into account by a judge because it is not an official legal document which has a binding effect on parties.

At present, both the application of analogous law and the use of official letters are merely temporary methods to reduce the negative effects of the shortcomings and limitations of the legal process. Thanks to many efforts from authorities and relevant subjects, the problems related to law-making have been gradually fixed because the laws are becoming increasingly

⁴¹⁸ Official letter No. 1427/CV/DC of the General Department of Land Administration for the purpose of providing instruction for solving problems of land use and conferring the certification of land use, dated 13 October 1995.

detailed, thereby reducing the need for implementing regulations. Therefore, the necessity of using an official letter and applying analogous law can be reduced. In addition, the government and ministries are now much faster and more efficient in issuing implementing regulations.⁴¹⁹ However, the ultimate aim should be a stronger and more applicable legal system and legal documents system, reducing the time for the law-making process, providing more detail, and obtaining more support from the members of the National Assembly and the public. In order to achieve these goals, CSOs should play a more important and active role in order to connect civil society and the public to the lawmakers.

3.2.2 The current context of law-making in the United Kingdom and the participation of CSOs in the law-making process

Law-making in the UK seems more complicated than in Vietnam in the sense that it contains three law-making processes for Scotland, Wales, and Northern Ireland together with the law-making process for the whole of the UK at the same time. In order to regulate and perform legislative work, the UK Parliament and the Parliaments of Scotland, Wales, and Northern Ireland have to establish and maintain stable regulation of the law-making process with effective support from information technology. In this section, the research only covers the law-making process of the UK, which happens in Westminster.

Public participation is one of the key issues which legislators in the UK have to take into account. Public participation ensures that the laws are implemented effectively and are understandable and accessible. Public participation, therefore, contributes to the democratic process and the

⁴¹⁹ Dang, X.H., 'The past 25 years, the present and the future' in *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, Black, E.A. and Bell, G.F. (eds) (New York: Cambridge University Press, 2011): 190.

enhancement of the quantity and quality of laws.⁴²⁰ Generally, legislation in the UK includes two types: primary and secondary legislation. Primary legislation is the main type of legislation. This is reflected in the work of Parliament drafting and issuing Acts and statutes at the public level and drafting and issuing Local and Personal Acts which affect a particular locality, person, or body.⁴²¹ Secondary legislation is made by government ministers under the powers delegated by an Act to draft and issue subordinate, subsidiary documents such as Orders, Regulations, Rules, and Codes.⁴²² In accordance with the scope of this research, the main focus here is on primary legislation.

Regarding the quantity of laws in the UK, according to data of the National Archives, the number of Acts in the UK has not changed a great deal in the three most recent decades. From 1983 to 1993, and then from 1993 to 2003 and 2003 to 2013, the number of laws has fluctuated in a narrow margin from forty to sixty.⁴²³ It seems that the stable development of the country over many decades has contributed to less demand for making new laws in the UK in comparison with developing countries such as Vietnam. For example, in 1993, fifty-two UK Public Acts were made. In 2003, the number of new laws reduced to forty-five and then fell to thirty-three in 2013. Looking through the quantity of laws which have been made in recent years, especially in 2013, it seems that ensuring the quantity of law is not a problem to the UK Parliament at present. Therefore, legislation in the UK concentrates more on improving the quality of the legislation in general, including the

⁴²⁰ Office of the Parliamentary Counsel, Cabinet Office, 'When Laws become too complex – A review into the causes of complex legislation', March 2013: 2.

⁴²¹ Legislation, <<http://www.law.ox.ac.uk/lrsp/overview/legislation.php>>, accessed 30 June 2014.

⁴²² Section 1, UK Statutory Instrument Act 1946.

See also at: Cabinet Office, Guide to Making Legislations, July 2013: 245-249 and Legislation, <<http://www.law.ox.ac.uk/lrsp/overview/legislation.php>>, accessed 30 June 2014.

⁴²³ UK Public General Acts, <<http://www.legislation.gov.uk/ukpga>>, accessed 25 August 2014.

process of drafting, consulting with the public and relevant authorities, debating, and the process of passing and implementing laws.

In order to enhance the quality of legislation in the UK, several elements must be taken into account. First is how to make the law understandable and applicable. The government has launched a website to publish laws in the UK which have been enacted from 2002,⁴²⁴ plus a wide range of information such as parliamentary reports, schedules, and other legal documents to facilitate the approach of the public to laws. However, the comprehension and applicable factor of laws are still problems. The problems may result from the language used when a word or phrase can have more than one meaning, drafting errors, or scientific development may change the connotation of a term.⁴²⁵ The First Parliamentary Counsel and the Permanent Secretary of the Cabinet Office have made a summary of the most frequent public complaints relating to the law. These are: 'can't understand it, can't find it, too complicated, changes all the time, there's too much of it, have to go back and forth through the law in order to understand it'.⁴²⁶

Second, multipurpose bills are becoming more common than they were, thereby creating a new challenge for law-making activity. Multiple topics and multiple policies placed in one bill have made multipurpose bills complicated. Moreover, multipurpose bills sometimes do not provide legislators with sufficient time to consider all the evidence and comments

⁴²⁴ The website <http://www.legislation.gov.uk/> is managed by the National Archive on behalf of the government. Publishing all UK legislation is a core part of the remit of Her Majesty's Stationery Office, part of The National Archives, and the Office of the Queen's Printer for Scotland.

⁴²⁵ Huxley-Binns, R. and Martin, J., *Unlocking the English Legal System* (3rd edn), (Hodder Education: London, 2010): 58–59.

⁴²⁶ The Good Law: making legislation more effective and accessible, <<http://www.instituteforgovernment.org.uk/events/goodlaw-launch-making-legislation-more-effective-and-accessible>>, accessed 6 July 2014.

required for debate.⁴²⁷ Therefore, such bills damage the quality of the law and the capacity to apply the law in the future. For example, the Small Business, Enterprise and Employment Bill,⁴²⁸ one of the multipurpose bills in the UK, sets a target to regulate the amount of legal and social relations over eleven aspects: Access to Finance, Regulatory Reform, Public Sector Procurement, The Pubs' Code Adjudicator and the Pubs' Code, Childcare and Schools, Education and Evaluation, Companies' Transparency, Company Filing Requirements, Directors' Disqualification, Insolvency, and Employment.⁴²⁹ Because of the mixture of various types of policy, including the policy for finance procedures such as payments, bankruptcy, evaluation, and the policy for human resources and employment, the Bill needs the involvement of the Department for Work and Pensions, the Cabinet Legislative Programme Committee, and other relevant state bodies and so becomes complicated. Reducing the number of multipurpose bills would avoid complication, conflict, and delay in drafting procedures and facilitate the public's participation in the law-making process in order to convey clear targets.⁴³⁰

In order to deal with these problems, the 'Good Law' project was launched in 2012 to enhance the quality and quantity of laws, develop a common understanding to encourage the involvement of public in the

⁴²⁷ 'Christmas tree' bills,

<<http://www.lawgazette.co.uk/analysis/christmas-tree-bills/70956.article>>, accessed 3 July 2014.

⁴²⁸ The Small Business, Enterprise and Employment Bill presented on 4 June 2014, <<https://www.gov.uk/government/collections/small-business-enterprise-and-employment-bill>>.

⁴²⁹ Preamble of Small Business, Enterprise and Employment Bill, <<http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0011/15011.pdf>>, accessed 5 July 2014.

⁴³⁰ Page, E.C., *The civil servant as legislator: law-making in British administration*, Public Administration 81, No. 4 (2003): 1–10.

legislation, and simplify the laws.⁴³¹ This initiative brings ideas to value of fairness and value of participation as presented in Section 2.1 of this thesis. In order to make the law more understandable and accessible, and encourage the participation of the public in making and implementing laws, information technology is widely used. There are twenty-four ministerial departments in the UK and all of them have their sub-websites which fall under the government's website. In general, the websites of the ministerial departments in the UK are well designed with more information than the corresponding ones in Vietnam. For example, the website of the Ministry of Education,⁴³² besides basic information such as the introduction, documents, publications, and current projects, also provides a supportive section for readers to find schools in England and view school performance statistics, characteristics, and spend per pupil data. With regard to academies, the website provides the latest sets of financial accounts through keywords, which are the post codes, school names, or regions.⁴³³ One more point to note is the integration of the website into the alert functions of social networks such as Facebook, Twitter, and YouTube. This enables people to follow key activities of the ministry and keeps people up-to-date with the ministry's activities. This is one point where Vietnam is less advanced than the UK.

Assisting the process of law-making in terms of quantity and quality are additional projects which are currently being implemented alongside the Good Law project. Among these is the government's commitment to openness and transparency.⁴³⁴ A major part of this plan is to use £1.5 million

⁴³¹ Richard Heaton, First Parliamentary Counsel and Permanent Secretary of the Cabinet Office,

<<http://www.theguardian.com/public-leaders-network/2013/apr/22/roundup-good-lawmaking-in-practice-live-chat>>, accessed 2 July 2014.

⁴³² Department for Education,

<<https://www.gov.uk/government/organisations/department-for-education>>, accessed 8 August 2014.

⁴³³ Ibid.

⁴³⁴ HM Government, *UK Open Government National Action Plan 2016-18*, May 2016.

of funding to unlock public data from public bodies. Through this plan, the Cabinet Office will support any organisations which want to improve their publication of data as part of the trend to increase transparency.⁴³⁵ Accordingly, central and local authorities are encouraged to publish their data directly so that people can understand and use them. The effectiveness of the government's commitment to the openness and transparency plan is supported by the government's digital strategy which has the goal of redesigning the digital services of the government in order to make information straightforward and convenient for the public.⁴³⁶ The strategy includes different actions to improve gradually the digital services of the government. These start with improving the capacity of board-level leadership, redesigning services, employing digital tools to encourage the public to access the legal database, and using the database for the government's legal comments and daily legal regulations. The government also uses governmental digital tools to explain the ideas of a draft paper in a way which helps people to understand what any changes would mean for them, and to receive significant feedback from the public to shape the future content of bills.⁴³⁷ By applying this method, not only are people enabled to participate in shaping the legislation but also evidence in Parliamentary pre-legislative scrutiny is provided.⁴³⁸

⁴³⁵ Open up public data,

<<https://www.gov.uk/government/news/15-million-funding-to-open-up-public-data>>, accessed 8 July 2014.

⁴³⁶ Government digital strategy,

<<https://www.gov.uk/government/collections/government-digital-strategy-reports-and-research>>, accessed 6 July 2014.

⁴³⁷ Policy paper, Action 14 case study: using digital tools to engage the public, the Cabinet Office, published 24 March 2014: 1.

⁴³⁸ Policy paper, Action 14 case study: using digital tools to engage the public, the Cabinet Office, published 24 March 2014: 2.

Another important reform in 2002 is the Standing Order on the carry-over of public bills,⁴³⁹ which is considered one of the methods which contributes to the enhancement of the quality of laws in the UK. The Standing Order permits the carry-over of a bill by the resolution of a House for a period, normally one extra session, if a bill is not completed or arrives from the Lords more than twelve months after its introduction.⁴⁴⁰ The carry-over of public bills enables a bill to overcome the delimitation of the drafting process of a Bill, which used to fix the drafting time within one parliamentary session. This is usually twelve months from the first reading for a bill to complete its passage through the other House because of the constitutional implication of prorogation. Applying the carry-over rule can give MPs more time to scrutinise a bill. The carry-over of a bill through more than one session when necessary is also a working method which is applied to the parliamentary work of the Vietnamese National Assembly. However, the use of a carry-over bill is more strictly controlled in the UK than in Vietnam. It is recognised as an ‘exceptional’ activity rather than a rule. A carry-over bill can be used only when there is a link between the carry-over and pre-legislative scrutiny, mostly in the second reading stage with the consent of the House with clear evidence that it is necessary to extend the available time for a bill.⁴⁴¹

Regarding public participation in the law-making process, the Consultation Principles issued in November 2013⁴⁴² also emphasise that state bodies should seriously and faithfully undertake public consultation to ensure that this is real engagement rather than a bureaucratic process. In order to truly improve the quality of public consultation, the consultation

⁴³⁹ House of Commons, Standing Orders of the House of Commons – Public Business 2013, HC 900 2013-2014, SO No.80A, December 2013.

⁴⁴⁰ Select Committee on Modernisation of the House of Commons, Modernisation of the House of Commons: A Reform Programme, 5 September 2002, HC 1168-I 2001-02: para 38.

⁴⁴¹ The Cabinet Office, *Guide to Making Legislation*, July 2014: 277.

⁴⁴² Consultation principles: guidance, <www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>, accessed 2 July 2014.

should begin early in policy development, when a policy is still under consideration, with an appropriate time frame,⁴⁴³ which is decided on a case-by-case basis in accordance with the nature and impact of the proposal in order to maximise the involvement of the public. In addition, the transparency of information and easy comprehension of the proposal with plain language and clear key issues should be checked in order to improve the quality and quantity of the comments and avoid misunderstandings among the public.⁴⁴⁴ Nevertheless, the website of the Vietnamese National Assembly and the websites of ministries in the UK are still not well developed in terms of interaction and direct consultation facilities. When people want to contribute their opinions to a specific policy or document, they have to search for an appropriate section on the website of the Cabinet or elsewhere.

In addition, the layouts of the website of the UK Parliament and other official websites are still not user-friendly for the public in order to help them follow the progress of a Bill or contribute their opinions directly about a bill. For example, regarding the Medical Innovation Bill,⁴⁴⁵ the website of Parliament provides the public with fundamental information, including the type of bill, the sponsor, the progress of the Bill, and explanatory notes. However, the public cannot have their say directly about the Bill or follow the stream of public and legislators' comments on the Bill because of the design of the website. One possible consequence is that the public may either hesitate to make a comment or make a comment which overlaps with others.

⁴⁴³ According to the 'Consultation principles: guidance' issued in November 2013, a realistic time frame can be understood as a time frame which allows stakeholders sufficient time to provide a considered response and excludes holiday period assumptions, including five working days of Easter, twenty-two working days of summer, and six working days of Christmas. Local and national election periods also need to be excluded from the time frame for public consultation.

⁴⁴⁴ 'Consultation principles: guidance' of the Cabinet Office, issued in November 2013: 1–3.

⁴⁴⁵ Medical Innovation Bill,

<<http://services.parliament.uk/bills/2014-15/medicalinnovation.html>>, accessed 30 June 2014.

In addition, bringing legislation to the official website of legislation⁴⁴⁶ is also a challenge to the relevant authorities when there are around 100,000 amendments every year.⁴⁴⁷ More effective action and guidance are needed in order to maximise the effectiveness of the attempt to improve law-making activity in the UK and make laws more practical, well-integrated with other laws, clear, consistent with the current legislative drafting styles, and efficient with regard to law-making without using excessive resources.⁴⁴⁸

A positive point which is contributing to the improved quality of legislation making and which Vietnam could learn from the UK is the establishment of communication channels between MPs and the public. Searching for contact details of MPs in the UK is simple. The online directory of MPs on the website of Parliament can provide the public with the profile and contact details of MPs just by entering the keywords of the MP's name, post code, or constituency.⁴⁴⁹ In order to avoid the overwhelming amount of information which the MPs may receive every day, the website of Parliament also provides concrete guidance to the public about selecting other contacts for their problems such as the Citizen's Advice Bureau, the local council, and other relevant departments of the Cabinet Office.⁴⁵⁰ Establishing an effective channel of communication between MPs and the public not only brings the opportunity of participating in the legislation-making process but also assists MPs in their work. MPs are better informed about a situation, developments, and problems within their constituencies and the country. This can also help MPs to reflect promptly and appropriately on a situation to Parliament and

⁴⁴⁶ <<http://www.legislation.gov.uk>>, accessed 3 July 2014.

⁴⁴⁷ John Sheridan, Head of Legislation Services at the National Archives, <<http://www.theguardian.com/public-leaders-network/2013/apr/22/roundup-good-lawmaking-in-practice-live-chat>>, accessed 2 July 2014.

⁴⁴⁸ Office of the Parliamentary Counsel, Cabinet Office, 'When laws become too complex -- A review into the causes of complex legislation', March 2013: 11.

⁴⁴⁹ Contacting your MP, <<http://www.parliament.uk/get-involved/contact-your-mp/contacting-your-mp/>>, accessed 10 September 2014.

⁴⁵⁰ Contacting MPs, <<http://www.parliament.uk/get-involved/contact-your-mp/when-to-contact-your-mp/>>, accessed 10 September 2014.

actively arrange their working schedules to assist people and organisations in solving problems if necessary. Furthermore, the annual salary for MPs includes the cost of running an office, employing staff, having somewhere to live in London and in their constituency, and travelling between Parliament and their constituency.⁴⁵¹

The regulation on expenses gives the MPs good facilities compared with members of the National Assembly who do not have offices and assistants for their parliamentary work. Having more assistance provides MPs with more opportunity to connect with the public. In addition, having good working conditions and clearer regulation of their conduct⁴⁵² has made a significant contribution to the quality of parliamentary work of MPs.

In a similar way to the Vietnamese National Assembly, the UK Parliament also consists of full-time Members of the House of Commons and part-time Members of the House of Lords. However, the separation of functions between the full-time and part-time legislators in the UK Parliament is clear compared with Vietnam. The House of Commons is the place which represents public opinions and interests through full-time elected members from constituencies. The House of Lords is established on a different basis and concentrates more on experience from a wide range of occupations. Members of the House of Lords work as part-time Members and can continue to be active in their fields, with careers in business, culture, science, sports, academia, law, education, health, and public service for the rest of the time.⁴⁵³

Regarding the quality of parliamentary work and working time, the Members of the House of Lords must still deliver quality work in the time

⁴⁵¹ MPs' expenses, <<http://www.parliament.uk/about/mps-and-lords/members/pay-mps/>>, accessed 10 September 2014 .

⁴⁵² The Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members, 22 June 2009.

⁴⁵³ Who's in the House of Lords, <<http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/>>, accessed 12 September 2014.

available. Although they work part-time, Members of the House of Lords take charge of the same legislative process as full-time members. In the 2013–14 session, Members of the House of Lords spent 532 hours, equal to 143 days, which is nearly half of the general annual working time of full-time members,⁴⁵⁴ examining sixty-two bills.⁴⁵⁵ Meanwhile, one important point which should be taken into account is that the expenses for House of Lords' members are lower than the expenses for full-time MPs. Most Members of the House of Lords, except those who receive a ministerial or officeholders' salary, do not receive a salary for their parliamentary duties but are eligible to claim a flat rate attendance allowance each sitting day when they attend the House and, within certain limits, the travel expenses which they incur in fulfilling their parliamentary duties.⁴⁵⁶ Therefore, the part-time Members of the House of Lords can claim that the quality of their working time is also maintained as highly as that of the full-time Members of the House of Commons based on the specific approach of their function in using their significant work experience to examine policy. The biggest difference between the Members of the House of Lords and House of Commons is the communication channel between the legislators and the public. The Members of the House of Lords do not represent geographic areas; thus, they do not have working time in constituencies. However, the public can use the search tool provided by Parliament on its website to find the contact details of relevant Members by entering the keyword of the area of policy interest.⁴⁵⁷ In addition, the public can also contact Members of the House of Lords by

⁴⁵⁴ The Members of the House of Commons spent 1,131 hours and 12 minutes in the 2012–13 session, equal to 143 working days, <<http://www.parliament.uk/about/faqs/house-of-commons-faqs/business-faq-page/>>, accessed 12 September 2014.

⁴⁵⁵ Making Law in the House of Lords, <<http://www.parliament.uk/business/lords/work-of-the-house-of-lords/making-laws/>>, accessed 12 September 2014.

⁴⁵⁶ House of Lords expenses, <<http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/house-of-lords-expenses/#jump-link-3>>, accessed 10 September 2014.

⁴⁵⁷ Get in touch with Members, <<http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/get-in-touch-with-members/>>, accessed 10 September 2014.

sending mail to Parliament or telephoning the main operator at Parliament to ask for contact details. Based on those communication channels, CSOs can make an impact on the law-making process at all three stages of legislation.⁴⁵⁸

Comparing the actual engagement of CSOs in the law-making process in Vietnam and the UK, the influence of CSOs in the UK seems stronger. CSOs, in the system of CSOs which has been mentioned in the section 2.3 of the thesis, conduct research seriously, evaluate the current situation, and develop opinions which they send to MPs and a bill team through collective activities rather than individual activities.⁴⁵⁹ Moreover, CSOs in the UK always pay attention to developing networks with experts in the UK and the EU community so that their opinions can be the collective and trusted work of the experts across the UK and the EU.⁴⁶⁰ The detail of the participation of CSOs in the law-making process in the UK is analysed further in Chapters 4 and 5.

In general, the current context of making law in Vietnam and the UK adopts certain common progress issues and challenges which can provide opportunities to learn from each other. Stable legislative activity with full-time members and the maximum usage of information technology in creating an interactive and more transparent environment among Parliament, the government, and ministries with the public in the UK are applicable lessons which Vietnam could take into account. In addition, the pros and cons of working time and the quality of the working time of full-time and part-time MPs of the UK can lead to insightful comparisons of the effectiveness of the two categories of MPs in the context of the parliamentary work of Vietnam. This is especially relevant when the working day of part-time legislators in the UK is nearly equal to the working time of part-time members of the National Assembly in Vietnam. The active attitude of CSOs to participate in the law-

⁴⁵⁸ Fieldwork, Interviewee E4.

⁴⁵⁹ Fieldwork, Interviewee E1.

⁴⁶⁰ Fieldwork, Interviewee E2.

making process in the UK is also an important point which can inspire CSOs in Vietnam.

3.3 The potential impact of CSOs on the law-drafting process

The law-making process can be divided into three stages based on the activities of the National Assembly and the UK Parliament and the outcome of each stage. These three stages are the pre-legislative, the legislative, and the post-legislative. At each stage of the law-making process, there are opportunities for CSOs to participate and have an impact on the process. The potential impact of CSOs on the legal system and the law-drafting process in Vietnam and the UK, including the drafting process of the laws and other Normative Acts in the Normative Act system in Vietnam, which was analysed in Section 1.4.2, together with the primary and secondary legal documents in the UK, are the main focus of this section.

3.3.1 The potential impact of CSOs on the law-drafting process in Vietnam

Legislation in Vietnam is based upon the model of the civil law system in which the National Assembly is the supreme legislative organ. All of the social relations are governed by Laws which are enacted by the National Assembly and by other legal documents in the Normative Act system. Therefore, the law-making process is the core activity of the National Assembly.

3.3.1.1 The pre-legislative stage

The pre-legislative stage in Vietnam generally involves two steps: formulating the schedule for the draft law and establishing the bill team. In the first step, the National Assembly forms the schedule for the draft law. This includes the drafting schedule for the entire session of the National

Assembly, which is decided at the second session of the National Assembly, and the annual law-drafting schedule, which is decided in the first session of the previous year.⁴⁶¹ It is vital to note that the law-drafting schedule is not drafted by the opinion or debates of the National Assembly itself but is derived from the proposals of the people and organisations (the subjects) which are eligible to present a bill or ideas for making laws. According to the Vietnam Constitution, the eligible subjects to present a bill or ideas for making laws consist of the President, the Standing Committee of the National Assembly, the Council of Ethnic Nationalities, Committees of the National Assembly, the government, the Supreme People's Court, and the People's Inspectorate General.

The Vietnamese Fatherland Front, which is known as a coalition organisation where 'the entire people's great solidarity bloc is built up, the people's mastery is brought into full play to contribute to the firm maintenance of national independence, sovereignty and territorial integrity',⁴⁶² and its member organisations,⁴⁶³ also has the right to submit draft laws to the National Assembly.⁴⁶⁴ Therefore, CSOs as member organisations, or through member organisations of the Vietnam Fatherland Front, can have an impact on this stage of legislation by submitting the draft of a bill or proposing a recommendation on laws to the Vietnam Fatherland Front as their representative. The Vietnam Fatherland Front makes an

⁴⁶¹ Article 31 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

⁴⁶² Article 1 of the Law on the Vietnamese Fatherland Front, No. 14/1999/QH10 dated 12 June 1999.

⁴⁶³ Article 4 of the Law on the Vietnamese Fatherland Front, No. 14/1999/QH10 dated 12 June 1999 provides for the members of the Vietnamese Fatherland Front. These include all voluntary unions of political organisations, socio-political organisations, social organisations, and individuals representing all classes, social strata, ethnic groups, religions, and overseas Vietnamese.

⁴⁶⁴ Article 84, Constitution of the Socialist Republic of Vietnam 2013, dated 28 November 2013.

assessment and gives the final decision to submit the proposal of a CSO to the Standing Committee of the National Assembly.

A proposal for a new law must indicate clearly some fundamental features: the need to promulgate such a law, its objects and scope of regulation, its basic views or policies and main content, the required resources or conditions for drafting the document, the preliminary impact assessment, and the expected date of requesting its approval by the National Assembly and its Standing Committee.⁴⁶⁵ Thus, a CSO can become involved and have a certain impact at this stage by sending its analysis or assessment reports to support or object to a proposal as necessary.

CSOs are also invited to undertake assessments on economic, social, environmental, and legal impacts, the impacts on the fundamental rights and obligations of citizens, and the possibility of the compliance of agencies, organisations, and individuals.⁴⁶⁶ Based on the proposal, the government composes the law-drafting schedule and makes its own remarks about the schedule before submitting it to the Standing Committee of the National Assembly. Members of the Standing Committee of the National Assembly must discuss the schedule before presenting it to the National Assembly in the official session.

At the next step of the legislation, a bill team for each law proposal is nominated after the law-drafting schedule has been approved.⁴⁶⁷ With regard to a bill team for a proposed law submitted by the Vietnamese government,

⁴⁶⁵ Article 37 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

⁴⁶⁶ Article 31, 32 of Decree No. 34/2016/ND-CP on Detailing and providing measures for the implementation of the Law on the Promulgation of Legal Documents, dated 14 May, 2016.

⁴⁶⁷ Article 52, Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

its members includes representatives of the leadership of the Ministry of Justice and the Government Office. A bill team consists of at least nine members.⁴⁶⁸ The members are those people who are acquainted with the technical issues of the proposed law and are able to participate in all the activities of the bill team.⁴⁶⁹

A bill team consists of a chairperson, who is the head of the lead drafting agency or organisation, and other members who are representatives of the senior management of the lead drafting organisation, other concerned organisations, and experts or scientists.⁴⁷⁰ The experts and scientists who are invited to participate in the law-making process are not only from the legal field. As the analysis shows in the value of participation in Section 2.2.4, relevant experts and scientists in other fields are also invited to participate on the bill team depending upon the content of each bill. The experts, therefore, worked together and challenge each other, challenge other members of the bill team at the stages of preparing, making, scrutinising, and publishing legislation.⁴⁷¹

According to the result of the fieldwork in Vietnam, the pre-legislative stage can be considered a golden chance for the public and CSOs to contribute their opinions, provide evidence, and become involved in forming a bill. All of the National Assembly participants in the fieldwork in Vietnam agreed that the public and CSOs are welcome to contribute their views, criticisms, and supportive evidence to a bill team at all stages of the legislation, although the pre-legislative stage is the one where such contributions are most expected. The pre-legislative stage is the stage at which a bill team, the members of the National Assembly, and the officers of the National Assembly Office and Government Office are at their most open-

⁴⁶⁸ Ibid.

⁴⁶⁹ Article 4 of Decision No. 03/2007/QĐ-TTg of the Prime Minister on the Regulation of the organisation and operation of the Bill team, dated 3 June 2008.

⁴⁷⁰ Ibid, Article 53.

⁴⁷¹ Fieldwork, Interviewee A1.

minded. Thus, the opinions of the public can make the most impact.⁴⁷² Moreover, the active participation of the public and CSOs during the pre-legislative process can help to keep the law closer to social conditions and make the effectiveness of the law last for a long time.⁴⁷³

CSOs can have an impact and contribute to the shaping process of a bill at the pre-legislative stage in various ways. They can send their opinions to the bill team, the National Assembly Office, or the Government Office; comment directly on the websites where the bill is published; and organise a seminar or workshop to help the bill team collect information, conduct analysis, and benefit from the views of a broad group of experts, researchers, and practitioners who have relevant work experience. In addition, some CSOs have well-organised structures which they can use to help the bill team to popularise the bill to their members and encourage such members to participate in discussions about the bill.⁴⁷⁴ For instance, the Union of Women in Vietnam has established two main channels to participate in the pre-legislative stage of a bill. First, the Central Committee of the Union collects the opinions of members about a bill through the local units of the Union. These opinions relate to the activities and members of the Union. The Central Committee of the Union then sends the opinions to the bill team, the Parliament Office, or the Government Office. Second, the representatives of the Union at the local level ensure that their voices are heard regarding the bill at the discussion session of the local delegation's National Assembly (this generally takes place prior to the opening of the meeting session of the National Assembly). These two channels have made the position of the Union of Women more important in the legislative process.⁴⁷⁵

In general, the importance of the participation of the public and CSOs at the pre-legislative stage is now recognised. However, as indicated by the

⁴⁷² Fieldwork, Interviewee A2.

⁴⁷³ Fieldwork, Interviewee A5.

⁴⁷⁴ Fieldwork, Interviewee A1.

⁴⁷⁵ Fieldwork, Interviewee A4.

fieldwork, not all CSOs feel welcome to contribute their opinions to a bill team. Further, to some extent, the public consultancy activity of a bill team at the pre-legislative stage is still regarded as 'superficial' by CSOs.⁴⁷⁶ Therefore, many CSOs continue to prefer to send their opinions to the media rather than directly to a bill team or the National Assembly Office.⁴⁷⁷ Sending opinions to the media can raise the concern of the public and create a 'wave of impact'; however, it is not a professional method which CSOs should maintain as a primary outlet for opinions about a bill. Examples of these activities of the CSOs are presented in the case studies in Chapters 4 and 5.

3.3.1.2 The legislative stage

After being established, the bill team starts to draft the bill. At the legislative stage, the bill team reviews and evaluates the related legal documents. The bill team also examines and evaluates the data, the current relevant legal provisions, and any other issues such as the social issues and economic issues related to the matters which the bill is going to regulate. The bill team also studies related international treaties and consults individuals and social organisations which are subject to any direct impacts of the bill.⁴⁷⁸

At this stage, consultation with CSOs may be conducted either directly at a meeting or workshop with the bill team or through a report with relevant data and analysis. In many instances, the heads or representatives of CSOs may be invited to participate in a meeting with the bill team. This provides the CSOs with a chance to voice their opinions directly and to deliver a report in the context of the value of democracy and participation in the legislative process.⁴⁷⁹ However, the meetings' minutes and reports, in most instances, are not published but are used internally by the bill team.

⁴⁷⁶ Fieldwork, Interviewee B1.

⁴⁷⁷ Fieldwork, Interviewee A8.

⁴⁷⁸ Article 55 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

⁴⁷⁹ Professor Dr Pham Hong Thai and Professor Dr Dinh Van Mau, the legal status of social organisations, <www.tailieutonghop.com>, accessed 9 May 2013.

When the first draft of a bill is completely finished, it is sent to the Ministry of Justice for assessment, and the Ethnic Council and other committees of the National Assembly for verification. Accordingly, the Ministry of Justice is responsible for assessing proposed laws prior to their submission to the government. When the proposed laws are complex and relate to several areas, the Ministry of Justice establishes an assessing council consisting of representatives of concerned agencies, experts, scientists, and organisations.⁴⁸⁰ At the same time, the Ethnic Council and other relevant committees of the National Assembly verify the scope and objects of regulation; the content of the draft document; controversial issues; the relevance of the draft document to the Communist Party's directions and policies; consistency with the constitution, existing laws, and the existing legal system; and the feasibility of the draft document.⁴⁸¹ For instance, the Commercial Arbitration Bill,⁴⁸² presented by the Vietnamese Lawyers' Association, was verified by the Judiciary Committee; the Access to information Bill, presented by the Ministry of Justice,⁴⁸³ was verified by the Legal Committee of the National Assembly; and the Disability Law, presented by the Ministry of Labour, was verified by the Social Committee of the National Assembly.

As noted in the discussion of delimitation and definition in Section 1.4 of the thesis, the law-making process of Vietnam differs from the UK and some other countries in accordance with the structure and activities of the

⁴⁸⁰ Article 58 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

⁴⁸¹ *Ibid*, Articles 63 to 69.

⁴⁸² The Commercial Arbitration Bill was presented to the National Assembly at the 6th plenary session of National Assembly term XII in 2009. The Bill was passed and became the Law on Commercial Arbitration No. 54/2010/QH12, dated 17 June 2010.

⁴⁸³ The Access to Information Bill was presented to the National Assembly at the 11th plenary session of National Assembly term XIII in 2016. The Bill was passed and became the Law on Access to Information No. 104/2016/QH13, dated 4 June 2016.

National Assembly. At the legislative stage, the process to consider, debate, and pass a bill is carried out at one or two meeting sessions of the National Assembly.⁴⁸⁴ This is one of the improvements of the amended Promulgation Law in 2008 and 2015 compared with the earlier provision in 1996 which provided that a bill may be considered, debated, and passed at one or certain meeting sessions of the National Assembly.⁴⁸⁵ This amendment shows the determination of the National Assembly to shorten the time for drafting and contribute to the renovation of legislation. The term, 'certain meeting sessions', is unclear and does not urge the members of the National Assembly to complete the drafting process and enact the law in accordance with a defined timeline; thus, it undermines the value of the efficiency of the legislative process. This progressive provision is still kept in the latest Law on the Promulgation of Legal Documents 2015. Accordingly, a law is debated and passed in one or two meeting sessions of the National Assembly. In an exceptional instance, a vital and complicated bill can be passed through three meeting sessions.⁴⁸⁶ The number of meetings and the procedures to consider, debate, and pass a law at each meeting session are also provided specifically in the Law on the Promulgation of Legal Documents 2015 in order to avoid the unclear provision of 'certain meeting sessions' in the Law on the Promulgation of Legal Documents 1996.

If the assessing and scrutinising procedures show that a bill is clear, highly necessary, and fulfils the requirements of drafting, the National Assembly will discuss the basic content and the major issues of the bill which are subject to controversy at plenary sessions. The National Assembly then approves the bill by a majority vote. When different ideas still remain regarding certain issues and problems, the National Assembly will settle the

⁴⁸⁴ Article 73 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

⁴⁸⁵ Article 45 of the Law on the Promulgation of Legal Documents 1996, dated 12 November 1996.

⁴⁸⁶ Article 73 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

differences by a majority vote for each point at the request of the Standing Committee of the National Assembly before approving the bill.⁴⁸⁷

If a bill still has controversial points which need further consideration or more input, it may be passed in the second session. In this instance, representatives of the Standing Committee of the National Assembly deliver a report to the National Assembly which explains improvements to the bill. The National Assembly deliberates the content of the bill which is still subject to different ideas. The Standing Committee directs and organises any studies, adoptions, and improvements for draft documents. The bill is then sent to the bill team for review and refinement in terms of drafting techniques before the date of voting and approval. In order to finalise the legislative process, the National Assembly approves the bill by a majority vote.⁴⁸⁸

As a result of the specific condition of the National Assembly of Vietnam in which only 33% of the members are full-time and the rest are part-time,⁴⁸⁹ the actual working time of the members of the National Assembly for legislation is limited compared with other countries. For instance, the Law on the Organisation of the National Assembly provides that a National Assembly member who is working on a part-time basis may spare at least one-third of their working time to perform the tasks of deputies.⁴⁹⁰ Consequently, when they are enacted, most of the laws merely contain basic provisions which can be applied at once rather than detailed regulations.⁴⁹¹ In order to put a law into practice, detailed measures for the implementation of

⁴⁸⁷ Ibid, Article 74.

⁴⁸⁸ Ibid, Article 75.

⁴⁸⁹ Dr Nguyen Si Dung, Deputy Chairman of the National Assembly Office, The demand for increasing the number of full-time members of the National Assembly, < <http://www.sggp.org.vn/chinhtri/2011/3/253073/>>, accessed 13 May 2013.

⁴⁹⁰ Article 24 of the Law on the Organisation of the National Assembly, No. 57/2014/QH13, dated 20 November 2014.

⁴⁹¹ The Administrative Law Faculty, *The Law-making Process Textbook* (Ho Chi Minh City: HongDuc, 2012): 140.

the law are still required. In the Normative Act system, a basic rule has been set that the Decrees of Government provide the detailed measures for implementing the law. As the next step, the Circulars of Ministers and Heads of Ministry-equivalent Agencies provide more detailed guidelines on the implementation of laws and decrees of the government and decisions of the Prime Minister regarding technical processes and standards. Techno-economic norms of the sector are also covered by each Ministry or Ministry-equivalent Agency.

Although most participants of the fieldwork in Vietnam consider the pre-legislative stage as the 'golden stage' for CSOs to contribute their opinions and have an impact on the shaping stage of a bill, participation and contributions from the public and CSOs at the legislative stage are also crucial to a bill team and the members of the National Assembly. From the stance of an officer of National Assembly office, the interviewee of the fieldwork confirm the importance of the participation and contribution of CSOs in the legislative stage, especially in the verification process is as important as the pre-legislative stage.⁴⁹² Besides the channels which the CSOs use at the pre-legislative stage, at the legislative stage, CSOs can send their opinions and evidence to the state agencies which are responsible for the assessment and verification of a bill and/or send them to the members of the National Assembly. Thus, the opinions of CSOs can be taken into account in the bill assessment report, the bill verification report, and in the plenary session of the National Assembly.

There have been some instances where the participation of the public, CSOs, and professional organisations had positive effects and contributed to the legislation⁴⁹³ at the legislative stage. Examples are the participation of Trade Union during the legislative stage of the Law on Social Insurance⁴⁹⁴

⁴⁹² Fieldwork, Interviewee C3.

⁴⁹³ Fieldwork, Interviewees B1–B4. The information based on the interviews.

⁴⁹⁴ Law on Social Insurance No. 58/2014/QH13, dated 20 November 2014.

and the Labour Code,⁴⁹⁵ the involvement of the Press Association during the amendment process of the Press Law, and the participation of Vietnamese Small and Medium Enterprises (VINA SMEs) during the legislative process of the Enterprise Law.⁴⁹⁶ However, the degree of participation of CSOs during the legislative process is limited because of factors such as the reputation of the organisations, the work area of the organisations, and the number of members.⁴⁹⁷ For example, some organisations such as the Trade Union, the Women's Association, the Lawyers' Association, Vietnamese Small and Medium Enterprises, and the Young Entrepreneurs' Association have acquired their advanced positions in the legal system with regard to legislation because of their long histories of establishment, important areas of work, the numbers of their members, and their actual contributions in the past and at present. The representatives of these organisations are often allocated a place in the National Assembly so that they can participate directly in the activities of the National Assembly, among which is the legislation process.⁴⁹⁸

Some organisations, including CSOs such as the Lawyers' Association, can be assigned to play the key role in a bill team to draft a bill. This occurred with the Bill on the Referendum. Therefore, the effectiveness and efficiency of the participation of these organisations and CSOs in the legislation may be higher than other CSOs which have been established more recently. Before the elections for the new term of the National Assembly, the Standing Committee of the National Assembly issues a Resolution in which the number of seats for each category of members of the

⁴⁹⁵ The Labour Code No. 10/2012/QH13, dated 18 June 2012.

⁴⁹⁶ The Enterprise Law No. 68/2014/QH13, dated 26 November 2014.

⁴⁹⁷ Fieldwork, Interviewee B2, B6.

⁴⁹⁸ The members of National Assembly term XIII (2011–2016) include the representatives of some social organisations, namely the Women's Association, the Fatherland Front, the Trade Union, The Youth Union, the Press Association, the Lawyers' Association, the Vietnamese Bar Federation, the Peasant's Association, the Union of Friendship Organisations, the Vietnamese Cooperative Alliance, and the Small and Medium Enterprises' Association.

National Assembly is allocated. For instance, preparing for the election of National Assembly term XIV that began on 22 May 2016, the Standing Committee of National Assembly term XIII issued Resolution No. 1140/2016/UBTVQH13 on the category of the members of National Assembly term XIV.⁴⁹⁹ Accordingly, the Vietnamese Fatherland Front and its member organisations have 31 seats in National Assembly term XIV. Implementing Resolution No. 1140/2016/UBTVQH13 of the Standing Committee, the Vietnamese Fatherland Front organised a consultative conference to collect the initial opinions of the representatives of member organisations about which organisation should have the right to nominate the candidate for the election. The organisations with a large number of members, a stable structure, and have made a significant contribution to the development of society in the current term of the National Assembly have a better chance in this selection. The rest of the CSOs which do not have representatives in the National Assembly use other channels, which were analysed in Section 3.2, to exercise their rights and reflect the value of participation in the law-making process.

The assumption that the opportunity for participation and making an impact on the law-making process is mainly for well-known organisations is to some extent one of the problems which causes certain negative effects on the participation of CSOs in the law-making process.⁵⁰⁰ Some CSOs do not adopt a serious attitude when participating in the law-making process. They send an abstract of ideas, sometimes without supportive evidence and concrete analysis, to answer some vital questions.⁵⁰¹ In addition, some CSOs mainly focus on protecting their organisation and members; thus, their opinions do not reflect a comprehensive view of an issue.⁵⁰² The value of democracy and participation in the law-making process can contribute to

⁴⁹⁹ Resolution of the Standing Committee of the National Assembly on the category of members of National Assembly term XIV, No. 1140/2016/UBTVQH13, dated 5 February 2016.

⁵⁰⁰ Fieldwork, Interviewee C1.

⁵⁰¹ Fieldwork, Interviewee C3.

⁵⁰² Fieldwork, Interviewee C1.

minimising this problem. When the public and CSOs can access more diverse sources of information and feel that they are made welcome to contribute their opinions, they produce a more comprehensive analysis.

In addition, CSOs and other types of organisation should exert more effort and produce higher quality reports. Quality reports are reports which essentially can reflect the relation and interaction among the opinions of CSOs, the scope of a bill, the current condition of society, and the legal system which is related to the area which the bill is going to regulate.⁵⁰³ If a report merely concentrates on protecting an organisation and its members regardless of the benefit to other groups in society or the basic benefits and values of society, it will not persuade a bill team, the National Assembly Office, the Government Office, and members of the National Assembly.⁵⁰⁴ The practice of the participation of CSOs at the legislative stage is analysed further in the case studies of Chapters 4 and 5.

3.3.1.3 The post-legislative stage

After a bill is approved by a majority vote, the chairperson of the National Assembly signs the law to confirm its status. No later than fifteen days after the date on which a law is passed, the President of Vietnam issues an order for the promulgation of the law.⁵⁰⁵ In Vietnam, one of the important tasks of post-legislation is to produce implementation documents for the law, including the Decrees of the government and Circulars from the ministries.

In theory, CSOs can participate at all stages of the law-making process. However, the role of CSOs and other organisations during the post-legislative stage is not highlighted. The government and ministries can

⁵⁰³ Fieldwork, Interviewee D1.

⁵⁰⁴ Fieldwork, Interviewee C1.

⁵⁰⁵ Article 80, the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

decide to ask or not to ask for the participation of the public, CSOs, or any professional organisations. There is no specific regulation in the Normative Act system requiring the government and ministries to take opinions from CSOs into consideration before issuing legal documents during the post-legislative stage. Before 1 July 2016, the role of some CSOs was recognised at the post-legislative stage by a regulation which allows the Standing Committee of the National Assembly or the government to cooperate with some social organisations, including CSOs (in accordance with the definition of CSOs in Chapter 1 of this thesis). Such cooperation can occur when issuing joint resolutions to provide guidelines on how to address the issues related to the participation of these organisations in state management.⁵⁰⁶ Through the joint resolutions, social organisations and CSOs confirm their role, and impact on the legislation, from the pre-legislative stage to the post-legislative stage. However, the Law on the Promulgation of Legal Documents 2015 amended this regulation of the Law on the Promulgation of Legal Documents 2008 and allows only the Central Committee of the Vietnamese Fatherland Front to cooperate with the Standing Committee of the National Assembly or the government in issuing joint circulars with the same purpose as the previous regulation in the Law on the Promulgation of Legal Documents 2008.⁵⁰⁷ Therefore, the participation of CSOs during the post-legislative stage is relatively limited compared with the two earlier stages. The particular participation of CSOs during the post-legislative stage is presented in the case studies of Chapters 4 and 5.

3.3.2 The potential impact of CSOs on the law-drafting process in the UK

The division of the law-making process in the UK into pre-legislative, legislative, and post-legislative stages is similar to the law-making process in

⁵⁰⁶ Article 20 of the Law on the Promulgation of Legal Documents No. 17/2008/QH12, dated 3 June 2008.

⁵⁰⁷ Article 18 of the Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

Vietnam. The first stage of the law-making process focuses on the activities of preparing a bill and the consultation process. The second stage is mostly about the three reading stages of a bill in the two Houses and related activities. The post-legislation stage follows Royal Assent.

3.3.2.1 The pre-legislative stage

The pre-legislative stage of the law-making process in the UK refers to the consultation and drafting bill process before a bill is presented to Parliament. Similar to the legislative process in Vietnam, the pre-legislative stage is a very important period in which CSOs can play a role and contribute to the process of shaping government thinking.

There are three activities in which CSOs can participate at the pre-legislative stage: lobbying, petitioning, and online discussions. The first channel which CSOs can engage with is providing information and supportive evidence to MPs and Parliament, thereby making an impact by lobbying. Among the methods used to influence policy and law in the UK, lobbying may be the one which is always placed at the centre. Once a bill has been published, it potentially becomes the target of lobbying in order to have it changed in certain aspects in accordance with the aims or purposes of the public or particular interest groups.

According to the analysis in Section 2.2.4, lobbying is a sign of the value of democracy and participation in the law-making process. In the pre-legislative process in the UK, the vital role of lobbying is emphasised when many lobbyists, especially CSOs, act as helpful providers of information and facilitators of parliamentary debate in order to improve the quality of the law, particularly regarding very technical and complex issues.⁵⁰⁸ In a study about

⁵⁰⁸ Parvin, P., *Friend or Foe? Lobbying in British Democracy* (London: The Hansard Society 2007): 5–23.

the lobbying industry in the UK,⁵⁰⁹ Parvin proved that transparency is the most important factor which politicians and legislators are concerned about when approached by a lobbyist. The survey suggests that the percentages of approaches from interest groups and charities in a specific week are nearly equal (59% and 51% respectively). Moreover, with regard to the value of effectiveness, 62% of MPs in the survey agree that MPs are persuaded more by arguments put forward by charities than businesses. Remarkably, 91% of participants believe charities are 'fairly effective' to 'very effective' at communicating with MPs. Further, the percentages of participants who believe that interest groups and businesses can undertake the same work with them are 88% and 57% respectively. The data reflect that charities, NGOs, and CSOs are becoming more professional in their approach to lobbying activity and that CSOs have a strong position, with opportunities to influence and contribute to the law-making process. Therefore, lobbying is one of the effective channels in which CSOs can participate in the early stage of the legislative process. In order to take the greatest advantage of the opportunities for lobbying and to be successful, lobbyists need to take into account some basic rules. First, the consultation document should pose specific questions for consideration. Second, the documents sent to parliamentarians should highlight areas and the level of concern which MPs may need to show when the bill is introduced. Third, lobbying can be a complex and long-term activity and may sometimes need to link to campaigning activity and litigation.⁵¹⁰

Besides the activity of lobbying, the second channel in which CSOs can participate in the consultation process is petitioning. Petitions are unlikely to change legislation but can hold a government to account. Essentially,

⁵⁰⁹ Dr Phillip Parvin, the former Director of the Hansard Society's Study and Scholar Programme, carried out a survey with 160 MPs about the lobbying industry in the UK. The results were published in 2007,

<<http://www.hansardsociety.org.uk/blogs/downloads/archive/2007/09/24/friend-or-foe-lobbying-in-british-democracy-jan-2007.aspx>>, accessed 23 August 2013.

⁵¹⁰ How laws are made in the UK and how to influence the law-making process, <<http://www.ilpa.org.uk/data/resources/4731>>, accessed 15 August 2013.

writing a petition is regarded as one of the most ancient human experiences. It is a basic right of citizens to petition established authorities, including Parliament, in order to demand a favour or the redressing of an injustice.⁵¹¹ In the UK, the right to petition is recognised in the Bill of Rights 1689. Accordingly, CSOs have the right to petition the House of Commons to make MPs aware of their opinions on an issue and to request action. Petitioning is a formal process and can be undertaken either by sending a written appeal to an MP or establishing an online petition as long as there is the signature and address of at least one person.⁵¹²

Petitioning is a common method and is frequently used when a CSO or anyone else wants to present a point of view to Parliament. For example, the numbers of petitions presented to the House of Commons in the sessions of 2007–2008, 2008–2009, and 2009–2010 were 220, 97, and 343 respectively.⁵¹³ It seems that petitions are more familiar and easier to be applied by groups and organisations compared with lobbying because of their convenience. There are no registration or declaration requirements. Any individuals, groups, and organisations can directly contact the Clerk of Public petitions in the Journal Office to obtain advice and make a petition as long as it complies with the following requirements: (i) a petition must clearly indicate the origin of the petition and its author(s); (ii) a petition must contain one or more paragraphs setting out the reason why the petitioner(s) is/are petitioning the House; (iii) a petition must contain a clear request to the House which is within its power to grant; (iv) a petition must conclude with a short set phrase indicating the end of the effective part of the petition; (v) every petition must be respectful, decorous, and temperate in its language; (vi) no application may be made for any grant of public money, except with

⁵¹¹ Heerma, L. and Voss, V., *Petitions in Social History* (Cambridge: Cambridge University Press, 2002): 1–2.

⁵¹² Petition Parliament <<http://www.parliament.uk/get-involved/have-your-say/petitioning/>>, accessed 15 August 2013.

⁵¹³ House of Commons Information Office, Public Petitions Factsheet 7 – Procedure series, revised August 2010

the recommendation of the Crown, unless the petition requests a grant of money by Bill; (vii) a petition may be handwritten, printed, or typed, but there must be no erasures, deletions, or interlineations in it; (viii) a petition must be written in the English language, although a translation certified by the Member can accompany it; and (ix) a petition must not have any letters, affidavits, or other documents attached.⁵¹⁴

One more point, which is considered an innovation in the development of the petition rights of CSOs and the public, is the electronic petition (e-petition). E-petitioning is an attempt by government and Parliament to improve the transparency and accountability of government and politics, and to expand democracy: 'It enables individuals and organizations, especially young people whether at school, university or work, and civil society, with an interest to express their views and seek as broad a consensus as possible on the policy and law in its final form.'⁵¹⁵ In addition, e-petitioning can work in diverse areas which are closely connected to either the daily life of people or national policy; for example, petitions on fuel duty, road tax, fuel prices, MPs' expenses, the NHS, immigration control, the EU, and the Lisbon Treaty.⁵¹⁶ In order for CSOs to undertake a petition to express their concerns about an issue, they access the e-petitions website of the government. They can then create a petition and send it to the eligible and responsible government department⁵¹⁷ or create a petition on Parliament's website.⁵¹⁸

⁵¹⁴ Public petition to the House of Commons,

<<http://www.parliament.uk/get-involved/have-your-say/petitioning/public-petitions/>>, accessed 17 August 2013.

⁵¹⁵ Cabinet Office, *In the service of democracy – A consultation paper on a policy for electronic democracy*, 2002.

⁵¹⁶ Miller, L., *E-petitions at Westminster: the way forward for democracy?*, *Parliamentary Affairs* 62, No. 1 (2009): 167–169.

⁵¹⁷ Create a new e-petition,

<<https://submissions.epetitions.direct.gov.uk/petitions/new>>, accessed 20 August 2013.

⁵¹⁸ Start a petition, < <https://www.parliament.uk/get-involved/sign-a-petition/>>, accessed 4 June 2016.

The government may contact CSOs by email to ask for confirmation and endorsement of information before making a petition available on the website for up to one year for anyone to sign. E-petitioning in the UK is an open channel which the public can use to express their opinions on all aspects of daily life in an attempt to influence the government and Parliament. The number of signatures for an e-petition ranged up to 6.4 million in 2012. Further, in one hour, 949 signatures appeared to support petitions,⁵¹⁹ while the e-petition website⁵²⁰ in its entirety receives 17 million views per year.⁵²¹ However, in order for a petition to obtain a response from the government, it needs 10,000 signatures. If a petition is to be presented in a debate in the House of Commons, it needs to achieve at least 100,000 signatures with the addresses of participants. From 24 July 2015 to 23 February 2016, there were only 125 petitions which received a response from the government and nineteen petitions were debated in Parliament from over 6,613 e-petitions which had been made.⁵²²

The third channel which the public and CSOs can use in order to participate in the law-making process is online discussions. Online discussions are open channels in which Parliament invites comments from the public via web forums or through social media networks as an aspect of the democracy value of legislation. Online discussions can be seen as one of the most interactive methods to increase substantially the circle of people and organisations involved in rule making and enable the exploration of a

⁵¹⁹ Taken randomly for one hour from 16.15 p.m. to 17.15 p.m., Wednesday, 24 February 2016, 949 signatures appeared on the website of the e-petition for Parliament.

⁵²⁰ www.petition.parliament.uk.

⁵²¹ E-petition, < <http://www.bbc.co.uk/news/uk-politics-19266497>>, accessed 24 February 2016.

⁵²² List of petitions, <<https://petition.parliament.uk/petitions?page=2&state=all>>, accessed 24 February 2016.

wider range of possible solutions for problems.⁵²³ They also have the advantage of flexibility regarding time and place, thereby encouraging participants to engage with discussions, rather than being available at a specific time and place as with a person-to-person meeting.

Another positive outcome of conducting online discussions is that they are open platforms in which everyone can participate or become observers to learn from others. For example, online discussions about women in science and domestic violence have developed into online communities which continue to exchange ideas and learn from each other.⁵²⁴ To some extent, online discussions are not only good for public participation in the law-making process but also for a bill's implementation and the post-legislative stage.

Considering that the specific characteristic of online discussions is an open channel for receiving ideas of people at large, the rules of online discussions are also more 'open' compared with lobbying and petitioning. Individuals and CSOs are not required to register with government for participating in online discussion, nor do they have to be British citizens or UK residents to be eligible to take part, as they do for petitioning. Anyone over the age of 12 (parental/ guardian's permission is required for those under 12-years old) can participate in discussions as long as they respect some basic rules. These include keeping the comments relevant to the discussion topic, not submitting defamatory comments, not submitting comments which could offend other discussion participants or prejudice ongoing or forthcoming court proceedings or break a court injunction, not using an inappropriate user name, and not spamming or flooding the forum to discourage others from contributing.⁵²⁵ However, the effectiveness of using

⁵²³ Carlitz, R.D. and Gunn, R.W., *Online rulemaking: a step toward e-governance*, Government Information Quarterly 19, No. 4 (2002): 392–394.

⁵²⁴ Pearce, S., *E-Democracy: consultations in the UK Parliament' in Vortrag auf der Konferenz Innovations for an E-Society*, Challenges for Technology Assessment, No. 17 (2001): 3–4.

⁵²⁵ Online discussion rules,

online discussions and the democratising potential seems limited.⁵²⁶ This can be explained by the lack of time which is available to provide profound consideration and/or the lack of evidence to support suggestions.

In addition, as an open channel, online discussions may somehow make the participants hesitate to express fully their thoughts when their pseudonyms and real names have to be recorded for the purpose of authentication.⁵²⁷ Therefore, the results of online discussions may be not considered as serious and valuable as the suggestions and recommendations from lobbying or petitioning activities. CSOs must take into account comprehensive pro and cons of each of the methods in order to decide effective strategies which promote their contributions and participation, and achieve the best results.

In addition to the three main channels which CSOs can use as outlets for their opinions about legislation in the UK, CSOs can also send reports and supportive evidence to Parliament or the MPs in their constituencies. Similar to Vietnam, the pre-legislative stage is the important stage at which CSOs in the UK can make their contributions to shaping bills. Because of the professional working styles and the proactive attitudes of CSOs, the effectiveness of the activities of CSOs at this stage is highly valued in the law-making process in the UK. CSOs in the UK do not wait to be invited to participate, as some CSOs do in Vietnam, but proactively follow the Queen's Speech in the ceremony which formally starts the parliamentary year and the legislative schedule on the websites of Parliament and the government in

<<http://www.parliament.uk/get-involved/have-your-say/online-discussion-rules/>>, accessed 20 August 2013.

⁵²⁶ Wright, S. and Street, J., *Democracy, deliberation and design: the case of online discussion forums*, *New Media and Society* 9, No.5 (2007): 853–854.

⁵²⁷ Coleman, S., *Connecting Parliament to the public via the Internet: two case studies of online consultations*, *Information, Communication & Society* 7, No. 1 (2004): 8–22.

order to develop their plans to participate in the legislation.⁵²⁸ The actual participation of CSOs at the pre-legislative stage is analysed in the case studies in Chapters 4 and 5.

3.3.2.2 The legislative stage

At the legislative stage, public reading is generally one of the aspects which improves public engagement by giving the public a chance to submit evidence and participate in the law-making process. Normally, the public reading stage begins when a bill is published and ends in time for the points raised by members of the public to be taken into account during the proceedings of the Public Bill Committee. During the second reading and the Public Bill Committee phase, the public are allowed to comment on specific aspects of a bill. All comments are collated into a report by the officials working on a bill and presented to the MPs who participate in the committee stage of the bill.⁵²⁹ The open consideration approach adopted by the Public Bill Committee during the proceedings encourages people to become more involved in the law-making process.

At the legislative stage, the period before the committee stage can also be a useful time in which to test a bill.⁵³⁰ In a different way to the situation in Vietnam, where the role of the public and CSOs is less important at the legislative stage compared with the pre-legislative stage, the role of the public and CSOs in the UK at the legislative stage is vital. The committees of Parliament often invite CSO representatives to speak at the meetings. The MPs also often receive the opinions of CSOs at both the pre-legislative and

⁵²⁸ Fieldwork, Interviewee E3.

⁵²⁹ HM Government, About the Public Reading Stage, <<http://webarchive.nationalarchives.gov.uk/20121204113930/http://publicreadingstage.cabinetoffice.gov.uk/about-the-public-reading-stage>>, accessed 20 August 2013.

⁵³⁰ Fieldwork, Interviewee E3.

legislative stages.⁵³¹ In addition, CSOs can publish their views on their websites, air them on the radio, or use other forms of the media to raise the concerns of the public about issues. Alternatively, they can send emails to the email account of the House to express their concerns on particular issues.⁵³²

Because the public and CSOs send hundreds of opinions, emails, and reports to Parliament and MPs daily, CSOs should make their reports, letters, and emails 'worth reading'.⁵³³ In a different way to the situation whereby CSOs in Vietnam sometimes send long reports without evidence or comprehensive analysis to the National Assembly or members of the National Assembly, a situation which was mentioned in Section 2.3.1, almost all the reports from CSOs in the UK were of high quality. All of the representatives of CSOs who participated in the fieldwork expressed their significant concerns about how to make their opinions, reports, letters, and emails constructive and 'worth reading' for MPs.

The three main factors which make the reports of CSOs in the UK 'worth reading' for MPs and other readers are accuracy, timeliness, and clarity and accessibility.⁵³⁴ First, a report must be accurate. In order to achieve this requirement, CSOs should collect enough data, information, and evidence to support their opinions and use experts to analyse these pieces of information. Second, a report should be sent to the MPs and relevant authorities at the right time. If a report is sent to MPs not at the right time or too late, it is no longer useful. Third, a report should be clear and accessible in terms of the format and the content of the document. MPs and other readers must be able to access, read, and understand it. In addition, a report should be as short as possible. If a report cannot be short, CSOs should add a summary to the first page so that MPs and other readers can have an

⁵³¹ Fieldwork, Interviewee E5.

⁵³² Fieldwork, Interviewee E5.

⁵³³ Fieldwork, Interviewee E1.

⁵³⁴ Fieldwork, Interviewee E3.

overview before considering the detail.⁵³⁵ These experiences and lessons of CSOs in the UK can act as guidance for CSOs in Vietnam to improve their work and have an impact on legislation which is more effective at the legislative stage. The actual participation of CSOs during the legislative stage is analysed in the case studies in Chapters 4 and 5.

3.3.2.3 The post-legislative stage

After a bill is enacted and becomes an Act, the Act is taken to the last stage, which is the post-legislative stage of Royal Assent. Under the Royal Assent Act 1967, an Act of Parliament is duly enacted if it is signified by Letters Patent under the Great Seal signed by the Queen's own hand.⁵³⁶ However, Royal Assent is not the end of a bill's process. In order to implement an Act, guidance and publicity is required to assist the process. At this stage, guidance is merely for explanation and gives external organisations a clear idea of how a new law affects them and what they need to do in order to comply with it.⁵³⁷ Such guidance does not welcome ideas and discussion from the public. However, CSOs still have an opportunity to participate at this stage of legislation, because of the possibility of the post-legislative scrutiny which can occur around three to five years after assent. The post-legislative scrutiny is an activity that can assist the Parliament to evaluate how a new law has worked in practice since it came into force. In principle, CSOs and experts are welcome to contribute their opinions, analyses, and evaluation of a law, its administration, and practice. CSOs and experts can also identify any gap between a law and its practice and recommend to Parliament how this can be dealt with.⁵³⁸ However, the post-legislative scrutiny pays more attention to the opinions of government departments, whose officials may have received representations and collected statistics, and also the opinions of MPs who through extensive

⁵³⁵ Fieldwork, Interviewee E3.

⁵³⁶ Chapter 23, Royal Assent Act 1967, May 1967.

⁵³⁷ Cabinet Office, Guide to Making Legislation, July 2013: 245–249.

⁵³⁸ Fieldwork, Interviewee E4.

constituency experience are well-placed to monitor how new legislation is working out in practice.⁵³⁹ Therefore, the CSOs sometime have less impact at this stage. The practical involvement of the CSOs and other committee of the Parliament in the post-legislative scrutiny will be analysed in sections 4.3.3 and 4.4 of Chapter 4.

3.4 Conclusion

In order to identify and explore the dynamic aspects of the participation of CSOs in the law-making process, Chapter 3 analysed the current context of law-making in Vietnam and with reference to the UK practices. The analysis of the current context of law-making in the two countries reflects opportunities for CSOs to participate in the law-making process. In accordance with the potential impact which CSOs can make on the law-making process analysed in Chapter 2, CSOs have several chances of contributing their opinions and making an impact on the law-making process. The current context of law-making in Vietnam confirms the need to have the public's views so that the members of the National Assembly can have more information before making their decisions to vote for a law. The participation of CSOs in the law-making process become more important when the number of part-time members of the National Assembly in Vietnam is still high. It is also the requirement of the values of democracy and participation of legislation. However, the need to establish better communication channels between the legislature and CSOs, and the need for procedures of the legislation to facilitate the involvement of the public in the law-making process are also significant lessons for Vietnam based on the survey of the UK materials. The public and CSOs should have better channels not only to receive information and notice the response and feedback from the Bill team, the government and the National Assembly but also to make their involvement in the law-making process more effective.

⁵³⁹ Modernisation Committee, Second Report of 2001-02, Modernisation of the House of Commons: A Reform Programme, HC 440.

Based on the critical view on the current context of the law-making process, Chapter 3 has also analysed the potential impact which CSOs can have in the law-making process. In order to lay the foundation for the analysis, Chapter 2 proposed the division of the law-making process into three stages, pre-legislative, legislative, and post-legislative, based on the activities of the National Assembly and Parliament, and the outcomes of each stage. Based on the activities at each stage and the practical information which was collected from the fieldwork in Vietnam and the UK, Chapter 3 has analysed the potential activities of CSOs and the impacts which they can make with regard to the law-making process. Some issues and lessons drawn from the work experience of CSOs in both countries in the three stages of the law-making process are also analysed in Chapter 3 so that CSOs in Vietnam can learn from these experiences and with by reference to the UK practices. Especially, the lessons about how to actively take the opportunity to participate in the law-making process and how to make reports 'worth reading' for MPs from the practical viewpoints of CSOs in the UK are worth consideration by CSOs in Vietnam.

CHAPTER 4: THE PARTICIPATION OF CIVIL SOCIETY ORGANISATIONS IN THE LAWMAKING PROCESS WITH REGARD TO A POLITICAL RIGHTS LAW IN VIETNAM WITH REFERENCE TO THE UNITED KINGDOM – A CASE STUDY

4.1 Introduction

In order to provide practical views and analysis of the engagement of CSOs in the law-making process in Vietnam, with drawing lessons from the UK, Chapter 4 presents two case studies. These concern the law-making process with regard to laws on political rights in the two countries. The laws are the Vietnam Access to Information Law and the UK Freedom of Information Act 2000. Because the Access to Information Law is one of two Vietnamese Bills which are currently drawing an immense amount of attention from legislators and the public, especially after the enactment of the new Constitution in 2013, this law is selected as a case study. Analysing the participation of CSOs in the law-making process of the Access to Information Law has provided a perspective about how a law to govern the activities of accessing, requiring, and providing information to the people and state agencies in Vietnam is being shaped. The analysis has also demonstrated the role of the Access to Information Law in the development of Vietnam. The equivalent case study, the Freedom of Information Act 2000 in the UK, was also chosen because of crucial involvement of CSOs in its making.

The right of access to information is regarded as one of the fundamental human rights in the political field and was recognised in the Universal Declaration of Human Rights 1948.⁵⁴⁰ Although there is not specific protection for ‘the right to know’ in the International Covenant on Civil and Political Rights, the right to freedom of opinion and expression includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers. This right is protected and recognised in Article 9 and in the second paragraph of

⁵⁴⁰ Universal Declaration of Human Rights, 217 A (III), 10 December 1948.

Article 19 of the International Covenant on Civil and Political Rights.⁵⁴¹ The second paragraph of Article 19 of the Covenant, which is also about freedom of expression, was interpreted by General Comment 34 and replaced General Comment 10 about freedom of opinion by the Human Rights Committee of the UN.⁵⁴² Accordingly, freedom of opinion and freedom of expression embrace a right of access to information held by public bodies, which may also include other entities when such entities are carrying out public functions regardless of the form in which the information is stored, its source, and the date of production. The right of access to information also includes a right whereby the media has access to information about public affairs, and the right of the general public to receive media output.

At the global level, the right of access to information has attracted a great deal of attention. Not only individual states but also intergovernmental bodies have started to devote more attention to this issue, especially at the UN and in the Commonwealth.⁵⁴³ Freedom of information was recognised as ‘a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated’ in the Resolutions adopted by the General Assembly of the United Nations in its first session in 1946.⁵⁴⁴ Furthermore, freedom of information is not only a political right but also a right to support or fulfil other rights, for instance, freedom of expression and democratic participation, because when people are provided with full information, they can make their decisions in elections in the most accurate and effective way.⁵⁴⁵ The underpinning of democracy by freedom of

⁵⁴¹ International Covenant on Civil and Political Rights 2200A (XXI) of 16 December 1966.

⁵⁴² General Comment 34 of the Human Rights Committee issued at the 102nd session of the Committee on 12 July 2011.

⁵⁴³ Mendel, C., Freedom of Information as an Internationally Protected Human Right, <<http://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>>, accessed 28 February 2015.

⁵⁴⁴ Resolution 59 (I) of the General Assembly of the United Nations in its first session in 1946.

⁵⁴⁵ Fieldwork, Interviewee B4.

information is perhaps the most important collective value of the right. Unless there are good reasons for public authorities to withhold information, people should be able to access it, because freedom of information not only benefits the public when it enables citizens to monitor the activities of the government and thereby expose corruption and mismanagement, it is a key component of transparent and accountable government.⁵⁴⁶

4.2 Case study of the Access to Information Law in Vietnam

The literature on the case study about the Access to Information Law was collected from the National Assembly, the government, and relevant ministries. The four crucial sources for the case study were as follows: the databases of the National Assembly, the government, and the Ministry of Information and Communication, and the website of the Ministry of Justice. In addition, the data from the fieldwork in Vietnam, the public comments on the Bill which have been published in the media, and relevant scholarly research were also taken into account. However, because the Access to Information Bill was passed on 6 April 2016 and the law has not yet come into effect,⁵⁴⁷ the fieldwork did not cover the post-legislative stage of the drafting process of the Act

4.2.1 Overview

In 1982, Vietnam ratified the International Covenant on Civil and Political Rights and adopted it as the necessary international legal basis for the fundamental constitutional civil rights in the Constitution 2013 of Vietnam. The fundamental human rights provided in the International Covenant on Civil and Political Rights have thus been recognised in the Constitution 2013. These rights include the right to freedom of opinion and speech, to freedom

⁵⁴⁶ Mendel, C., Freedom of Information as an Internationally Protected Human Right, <<http://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>>, accessed 28 February 2015.

⁵⁴⁷ The Access to Information Act will come into effect on 1 July 2018.

of the press, of access to information, to assemble, to form associations, and to hold demonstrations.⁵⁴⁸ All of these rights were addressed but not elaborated in Article 25 of the Constitution 2013 as a cluster of political rights for Vietnamese people.⁵⁴⁹ These rights were intended to be developed into detailed provisions in specific laws for each right follow the enactment of the Constitution. The Access to Information Law was proposed as a draft in this context.

The process of drafting the Access to Information Law was challenged by the context that during the wars which Vietnam suffered for more than a century, people developed the habit of not imparting information, except the basic information for daily life. The administration of confidential information made the practice of one-way communication from the state to the public a deep-rooted habit in social life over many years.⁵⁵⁰ In the early days of the Democratic Republic of Vietnam, President Ho Chi Minh issued two Ordinances on State Secret Protection to provide for the responsibility of military officers, soldiers, state officers, organisations, and all people to protect state secrets and prevent enemies being able to search and steal state secrets.⁵⁵¹ According to Ordinance No.69/SL, state secrets include all information, documents, and locations which can be interpreted as

⁵⁴⁸ Article 25, The Constitution 2013 of Vietnam dated 28 November 2013.

⁵⁴⁹ Article 25, The Constitution 2013 of Vietnam provides as follows: 'The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.'

⁵⁵⁰ Nguyen, D.D., member of the Bill team of the Access to Information Bill, The Law on Access to Information, a milestone in the democratic development process, <<http://www.tinmoi.vn/Luat-Tiep-can-thong-tin-Cot-moc-quan-trong-trong-qua-trinh-dan-chu-0146513.html>>, accessed 20 October 2014.

⁵⁵¹ Ordinance No.154/SL on the Penalties for the Violation of Protecting State Secrets of the President of the Democratic Republic of Vietnam dated 17 November 1950 and Ordinance No. 69/SL on the Provision of Additional Issues to Ordinance No. 154/SL on the Penalties for the Violation of Protecting State Secrets of the President of the Democratic Republic of Vietnam dated 5 December 1951.

advantageous information for enemies and disadvantageous for the government.⁵⁵² The definition of 'state secrets' in Ordinance No.69/SL was too vague to define. Thus, in order to keep the information as secret as possible, a policy was eventually developed in wartime that advised people as follows: 'do not talk, do not know, do not believe'.⁵⁵³ In the period of centrally planned governance before '*doi moi*', the flow of information also mostly came from the state to the public rather than vice versa.

Therefore, the enactment of the Access to Information Law in Vietnam can be considered a re-balancing process between the protection of state secrets and the openness of the state towards the public.⁵⁵⁴ The definition of state secrets in the current Ordinance on State Secrets Protection 2000 covers a broad range of information which includes 'all information, documents about any cases, affairs, objects, venues, time, speech which have important content in the fields of politics, national defence, security, external affairs, economy, science, technology, and other fields, which the State does not publicise or has not yet publicised and the disclosure of which will cause harm to the State of the Socialist Republic of Vietnam'.⁵⁵⁵

This broad range of coverage for state secrets inevitably limits the ability of the people to access information. For instance, on 20 May 2004, the Tuoi Tre newspaper, one of the most prestigious newspapers in Vietnam,

⁵⁵² Article 2, Ordinance No. 69/SL on the Provision of Additional Issues to Ordinance No.154/SL on the Penalties for the Violation of Protecting State Secrets of the President of the Democratic Republic of Vietnam dated 5 December 1951.

⁵⁵³ Nguyen, D.D., member of the Bill team of the Access to Information Bill, The Law on Access to Information, a milestone in the democratic development process, <<http://www.tinmoi.vn/Luat-Tiep-can-thong-tin-Cot-moc-quan-trong-trong-qua-trinh-dan-chu-0146513.html>>, accessed on 20 October 2014.

⁵⁵⁴ Ministry of Justice, Report on the meeting of the verification committee of the Access to Information Act on 17 December 2008.

⁵⁵⁵ Article 1, Ordinance on State Secrets' Protection No. 30/2000/PL-UBTVQH10, dated 28 December 2000.

published an article about the proposal of the Minister of the Ministry of Health to the Prime Minister to request an inspection of the activities of Zuellig Pharma. The proposal was given in official letter No. 3497/YT/QLD of the Minister of the Ministry of Health⁵⁵⁶ based on the suspicion that Zuellig Pharma had been taking advantage of its status as a non-exclusive drug distributor to boost the price of drugs in Vietnam beyond their true values. Seven months after the publication date, on 5 January 2005, Lan Anh, a journalist of the Tuoi Tre newspaper, was prosecuted by the investigation agency of the Ministry of Police for appropriating and publishing state secrets in accordance with article 263 of the Criminal Code 1999.⁵⁵⁷ The content of the official letter was recognised as a 'state secret' in accordance with Article 1 of the Ordinance on State Secrets' Protection No. 30/2000/PL-UBTVQH10. However, the Supreme People's Procuracy of Vietnam investigated the situation and concluded that the journalist did not violate the provision of Article 263 of the Criminal Code and Ordinance No. 30/2000/PL-UBTVQH10. The conclusion was reached because official letter No. 3497/YT/QLD was not stamped as 'confidential' and the content of the letter was announced by a representative of the Ministry of Health at a press conference of the Ministry on 28 April 2004. Therefore, on 22 April 2005, the Supreme People's Procuracy decided to suspend the investigation of the criminal case and closed the case. This case once again confirmed the necessity of having a law to recognise officially the right of access to information and clarify the range of information which is accessible to the public or is forbidden as a state secret.

In Vietnam, freedom of information must accommodate the framework of a country based on the presence of a leading political party. Even in the international codes, the right of access to information is an important political and democratic right of people but is not an absolute right. In certain circumstances, information can be restricted from the public. However,

⁵⁵⁶ Official letter No. 3497/YT/QLD of the Minister of the Ministry of Health, dated 19 May 2004.

⁵⁵⁷ The Criminal Code 1999, No. 15/1999/QH10, dated 21 December 1999.

according to the International Covenant on Civil and Political Rights 1966, information shall only be restricted by law and when necessary with regard to the rights or reputations of others, or to the protection of national security, public order, public health, or morals.⁵⁵⁸ Drawing the limitation line of access to information is a challenge for any state and international body. For instance, in the Europe, the Council of Europe Convention on Access to Official Documents⁵⁵⁹ confers the right to limit the right of access to official documents on each state party. However, the limitation or restriction should be provided precisely by law for the purpose of protecting the following important elements of a country: national security, defence, and international relations; public safety; the prevention, investigation, and prosecution of criminal activities; disciplinary investigations; inspection, control, and supervision by public authorities; privacy and other legitimate private interests; commercial and other economic interests; the economic, monetary, and exchange rate policies of the State; the equality of parties in court proceedings and the effective administration of justice; and the environment and deliberations within or among public authorities concerning the examination of a matter.⁵⁶⁰ However, the correct design of laws is beyond the scope of this section and this chapter because the analysis here is about the participation of CSOs in the law-making process of the Access to Information Law and the Freedom of Information Act 2000.

For the purpose of enhancing the development of a democratic society and political science, and the integration of Vietnam into the international legal system, it is necessary for Vietnam to establish the right of access to information as one of the essential political rights in the country. The need to draft the Access to Information Law was mentioned and confirmed in the National Direction to Construct the Country in the Period of the Transition to

⁵⁵⁸ Article 19, the International Covenant on Civil and Political Rights of the United Nations 1966.

⁵⁵⁹ Council of Europe Convention on Access to Official Documents (2009) CETS 205.

⁵⁶⁰ Article 3, Council of Europe Convention on Access to Official Documents (2009) CETS 205.

Socialism, which was passed in term VII, 1991 by the Central Committee of the Communist Party. The need to draft the Access to Information Law was also referred to in part III of Direction No. 01/CT-TW of the Politburo of the Communist Party⁵⁶¹ regarding ‘The primary development direction of the economic, cultural, social affairs, defence, and security aspects of the National Direction in order to construct the country’ and in Resolution No. 780/NQ-UBTVQH13 of the National Assembly Standing Committee on Implementing the Resolution of the National Assembly on the Adjustment of the Legislation Schedule of the National Assembly term XIII in 2014 and 2015.

Before the Law on Information Technology,⁵⁶² which came into force on 1 January 2007, information exchange among state agencies and the government, and between state agencies and citizens, was mainly undertaken with hard-copy documents. The Official Gazette and public media such as the official internet sites were not widely used as communication tools among the state agencies and between the government and the people. The documents printed in the Official Gazette are considered equivalent to the original documents.⁵⁶³ Within two days, legal documents are signed by a competent person. The documents must then be sent to the Official Gazette office for publishing. Each commune and ward⁵⁶⁴ receives one free copy of each issue of the Official Gazette.⁵⁶⁵ Currently, the Official Gazette is still an official source for providing legal documents to the public. The activities of the Official Gazette office and the publishing procedure of the Official Gazette are currently governed by Decree No. 100/2010/ND-CP, which replaced the

⁵⁶¹ Direction No. 01/CT-TW of the Politburo of the Communist Party, dated 17 March 2011.

⁵⁶² The Law on Information Technology No. 67/2006/QH11, dated 29 June 2006.

⁵⁶³ Article 7, Decree No. 100/2010/ND-CP on the Official Gazette, dated 28 September 2010.

⁵⁶⁴ The commune and ward are the two smallest local administrative units in Vietnam for rural and urban areas.

⁵⁶⁵ Article 16, Decree No. 100/2010/ND-CP on the Official Gazette, dated 28 September 2010.

first Decree, No. 104/2004/ND-CP, regarding the Official Gazette of the government.⁵⁶⁶

On 26 June 2000, the Information Technology Bill was enacted and laid the foundation for information technology applications and development activities, measures to ensure information technology applications and development, and the rights and obligations of agencies, organisations, and individuals.⁵⁶⁷ Accordingly, state agencies are required to build and use the information infrastructure for their operational purposes. Public services in the network environment must also be provided for information exchange and supply between state agencies and organisations or individuals.⁵⁶⁸ In accordance with the Law on E-Transaction, Decree No. 64/2007/ND-CP of the Government on Information Technology Application in State Agencies' Operations, state agencies gradually established their internet sites and used them as tools to communicate with the public.

Currently, the right of access to information by the public is exercised mainly through the websites of the Parliament, the government, ministries, and the internet sites of the city and provincial authorities.⁵⁶⁹ In order to standardise the layout of the websites and ensure convenient access to websites of state agencies, the Ministry of Information and Communications issued Circular No. 26/2009/TT-BTTTT.⁵⁷⁰ However, in practice, the range of

⁵⁶⁶ Decree No. 104/2004/ND-CP on the Official Gazette, dated 23 March 2004.

⁵⁶⁷ Article 1, The Law on Information Technology No. 67/2006/QH11, dated 29 June 2006.

⁵⁶⁸ *Ibid*, Article 26.

⁵⁶⁹ Lien, P.T.P.L, The right of access to information and its implementation, Hanoi Culture University, <<http://huc.edu.vn/chi-tiet/1321/.html>>, accessed 11 February, 2015.

⁵⁷⁰ Circular No. 26/2009/TT-BTTTT of the Ministry of Information and Communications on Providing for the provision of information and assurance of convenient access to websites of state agencies, dated 31 July 2009.

information which the people want to access goes beyond the 'ready-made' basic information provided on the websites of the state agencies.

In addition, although Circular No. 26/2009/TT-BTTTT requires that activities' information regarding state agencies should be updated at least once a day during weekdays,⁵⁷¹ certain websites do not comply with the regulations which are meant to ensure the right of access to information by the people.⁵⁷² For instance, when accessing the websites of the Ministry of Health and the Ministry of Education and Training on 12 February 2015, the content of the website of the Ministry of Education and Training was found to be blank with the notice 'the page is not available',⁵⁷³ and the internet site of the Ministry of Health showed that the information was updated on 2 February 2015, 3 February 2015, 22 January 2015, and 16 January 2015.⁵⁷⁴

Given this limited level of proactive publication, the need for the Access to Information Law is confirmed. At a governmental level meeting about the legislative schedule for government on 25 December 2013, the Prime Minister re-confirmed the necessity of having an Act regarding the Access to Information Law in Vietnam. Legislating on an Act for the Access to Information Law will not only show the commitment of the Government and Parliament to implement the constitutional right of access to information by the people; it will also reflect a general demand to enter an era of free

⁵⁷¹ Ibid, Article 12.

⁵⁷² Lien, P.T.P.L, The right to access to information and its implementation, Hanoi Culture University,
<<http://huc.edu.vn/chi-tiet/1321/.html>>, accessed 11 February 2015.

⁵⁷³ The website of the Ministry of Education and Training, <<http://www.moet.gov.vn/>>, accessed 12 February 2015.

⁵⁷⁴ The website of the Ministry of Health,
<<http://www.moh.gov.vn/news/pages/tincanbiet.aspx?ItemID=172>>, accessed 12 February 2015.

information.⁵⁷⁵ Moreover, the Access to Information Law also contributes to the development of society in many senses including economic, enhancing the effectiveness of state management, reducing legal claims or complaints, and improving the relationship between the state and the people.⁵⁷⁶

Having implemented Resolution No. 27/2008/QH12 on the Legislative Programme in 2009, supplementing the legislative programme of the National Assembly term XII,⁵⁷⁷ the National Assembly appointed the Ministry of Justice as the drafting coordinator for forming a Bill team to draft the Access to Information Bill. The Bill was drafted with two main purposes: to ensure the right of access to information by citizens and organisations, and to enhance openness and transparency in the activities of state bodies.⁵⁷⁸ However, according to Decision No. 251/QD-TTg of the Prime Minister on the Plan of the Government to Implement the Constitution 2013,⁵⁷⁹ the Access to Information Law was not allocated enough time for consideration and verification in the period 2014–2015. The Access to Information Bill, therefore, was delayed until the 11th plenary session of the National Assembly term XIII. On 6 April 2016, the National Assembly term XIII voted to pass the Bill, thereby enabling it to become the Access to Information Law. However, the effective date of the law will be delayed until 1 July 2018.

⁵⁷⁵ The requirement of drafting the Access to Information Act <<http://nld.com.vn/thoi-su-trong-nuoc/se-som-co-luat-tiep-can-thong-tin-20131225213153172.htm>>, accessed 11 February 2015.

⁵⁷⁶ Ministry of Justice, The report on the impact assessment of the Access to Information Bill, (2009): 9–11.

⁵⁷⁷ Resolution No. 27/2008/QH12 on the Legislative Programme in 2009, supplementing the legislative programme of the National Assembly term XII, dated 15 November 2008.

⁵⁷⁸ Article 1, the Access to Information Law 2009.

⁵⁷⁹ Decision No. 251/QD-TTg of the Prime Minister on the Plan of the Government to Implement the Constitution 2013, dated 13 February 2014.

Two important questions which were raised in this period are about the appropriate time to pass the Bill and the supportive systems for the Act when it is enacted. The Report of the Impact Assessment of the Bill team⁵⁸⁰ included a suggestion that by maintaining the current situation and focusing on enhancing the implementation of the existing regulations which relate to the access to information rights of the people, time would be saved as would the legislative financial resources for drafting a new law. Currently, there are various laws and ordinances which state the responsibilities of state agencies to the public on information. These include the Law on Anti-Corruption,⁵⁸¹ the Law on Building,⁵⁸² the Investment Law,⁵⁸³ the Land Law,⁵⁸⁴ the Law on Environmental Protection,⁵⁸⁵ and the Law on the Promulgation of Legal Documents.⁵⁸⁶

According to the perspective of the representative of the People's Committee of Ho Chi Minh City at the meeting with the Ministry of Justice about the implementation of the Civil Code on 5 April 2013, the right of access to information and the procedure to provide information should be added to the Civil Code rather than being passed as a separate law.⁵⁸⁷ In practice, the right of access to information often links with the regulations for protecting the confidential information and privacy of citizens. Associating the right of access to information about the individual rights of citizens in the Civil Code would save the time of the legislature and encourage the law to be

⁵⁸⁰ The Report of the Impact Assessment of the Bill team, dated 2 July 2009.

⁵⁸¹ The Law on Anti-Corruption No. 27/2012/QH13, dated 23 November 2012.

⁵⁸² The Law on Building No. 50/2014/QH13, dated 18 June 2014.

⁵⁸³ The Investment Law No. 59/2005/QH11, dated 29 November 2005.

⁵⁸⁴ The Land Law No. 45/2013/QH13, dated 29 November 2013.

⁵⁸⁵ The Law on Environmental Protection No. 52/2005/QH11, dated 29 November 2005.

⁵⁸⁶ The Law on the Promulgation of Legal Documents No. 17/2008/QH12, dated 3 June 2008.

⁵⁸⁷ The right of access to information should be added to the Civil Code, <<http://tuoitre.vn/tin/phap-luat/20130405/kiem-nghi-dua-quyen-tiep-can-thong-tin-vao-luat-dan-su/541510.html>>, accessed 20 October 2014.

more integrated.⁵⁸⁸ The Deputy Minister of the Ministry of Justice also expressed his concern about the time issue because the Ministry of Justice and other ministries have not had a sufficient workforce and technological capacity to implement the law. Estimates of the number of enquiries for information from people when the law comes into force are necessary before the law is passed.⁵⁸⁹

The other side of the argument, that the current legal system and regulations prevent the right of access to information for people from being fully exercised, was also addressed.⁵⁹⁰ Firstly, the current legal normative documents merely provide the duty of state agencies to provide information to the public. The right to actively request information by the public has not been officially recognised in legal documents. Consequently, people hesitate to request any information from the state agencies, especially because of the ingrained cultural characteristics mentioned earlier. Secondly, the current provisions for providing information to the public have not yet covered all the sectors of social-economic activities, especially information about the planning schemes for using land and urban development. Thirdly, the current legal system has not established a convenient process or procedure to provide information to the public. The ministries and ministerial-level state agencies are required to provide information for the public by updating their official websites and holding press conferences every three months.⁵⁹¹ In the information society of Vietnam in 2016, that method of providing information

⁵⁸⁸ Ibid.

⁵⁸⁹ Controversy over passing the Access to Information Act, <<http://plo.vn/chinh-tri/tai-khoi-dong-luat-tiep-can-thong-tin-thieu-thong-tin-nen-nhieu-tranh-cai-38988.html>>, accessed 11 February 2015.

⁵⁹⁰ The Ministry of Justice, The introduction of the Access to Information Law (2009): 2, 3.

⁵⁹¹ Article 3, The Regulation on making official statements and supplying information to the press was issued in accordance with Decision No. 25/2013/QĐ-TTg of the Prime Minister on 4 May 2013.

from the state agencies to the public seems unsuitable because it can prevent the public from accessing the most up-to-date information.

Moreover, although many state agencies employ their spokespersons in accordance with the regulation regarding spokespersons of the government,⁵⁹² the activities of the spokespersons are often not regulated. The spokespersons of the ministries and ministerial-level state agencies are only required to provide official opinions in three cases: when the issues can make a strong impact on society, when the spokespersons receive a direct request from an authority to provide information about a specific issue, and when there is evidence that the press has published false information which needs to be corrected.⁵⁹³ These provisions have not caused a strong demand for the spokespersons to provide proactive information to the public.

According to the research and survey conducted by the Media and Education Centre (MEC) of the Vietnam Union of Science and Technology Associations in 2013 with 279 journalists and thirty state agencies, only 25% of information provided by state agencies meets the requirement about the time in which the state agencies must provide information to the media in accordance with Article 4 of Decision No. 77/2007/QD-TTg of the Prime Minister on Promulgating the Regulation on the Making of Statements and the Supply of Information to the Press.⁵⁹⁴ Further, only 25% of the information provided can be used for the purpose of the requesters. Of the responses from the state agencies and spokespersons for information

⁵⁹² The regulation on making official statements and supplying information to the press was issued in accordance with Decision No. 25/2013/QD-TTg of the Prime Minister on 4 May 2013.

⁵⁹³ Article 4, The regulation on making official statements and supplying information to the press was issued in accordance with Decision No. 25/2013/QD-TTg of the Prime Minister on 4 May 2013.

⁵⁹⁴ Decision No. 77/2007/QD-TTg dated 28 May 2007 of the Prime Minister on Promulgating the Regulation on the Making of Statements and Supplying Information to the Press.

requested by the press, 75% is merely a notice that 'the information is in the process of being analysed'.⁵⁹⁵ Therefore, the Access to Information Law is necessary to ensure the rights of citizens to access information in Vietnam in this context. A separate and comprehensive law on Access to Information would also enhance openness and transparency in the operation of state agencies. It would also emphasise the responsibility of the state agencies to publish public information and abolish the privilege among the state agencies of some civil servants using information for their lucrative personal purposes.⁵⁹⁶

4.2.2 The content of the Access to Information Bill

The Access to Information Law was drafted with five chapters, which contained the following.

Chapter I provides the general provisions about the primary purpose and scope of the law, an explanation of the terms, the general principles for citizens and organisations to access information, the method of providing information, the prohibited acts, and the interaction between the Access to Information Law and other relevant statutes.

Chapter II provides the types of information which can be widely published and the information which is required to be published on the websites of the government, state bodies, and via the mass media.

Chapter III focuses on providing the conditions which ensure that citizens and organisations are supplied with information in the most convenient method when requested.

⁵⁹⁵ The delay in information provision by the state agencies would lead to fines, the research of MEC, VUSTA <<http://www.vusta.vn/vi/news/Lien-hiep-hoi-1733/Co-quan-Nha-nuoc-cham-cung-cap-tin-cho-bao-chi-se-bi-xu-phat-56960.html>>, accessed 13 March 2015.

⁵⁹⁶ The introduction of the Access to Information Law by The Ministry of Justice, dated July 2009.

Chapter IV provides the responsibility of the state agencies to implement the law and Chapter V provides the implementation provisions of the law.

The provisions in the five chapters of the Access to Information Law were drafted with the aim of creating a unified legal framework to ensure the right of access to information by organisations and individuals. The ambition of the Law is to become a tool which creates opportunities for people to participate in the activity of monitoring state management, thereby enhancing the openness, transparency, and accountability of public agencies. Furthermore, the Access to Information Law aims to contribute to the reduction of corruption, the strengthening of democracy, and the improvement of the relationship between the state and citizens.

4.2.3 The contribution of civil society organisations in the drafting process

4.2.3.1 The pre-legislative stage

Confirming that an independent law to govern the right of access to information is necessary, the Minister of the Ministry of Justice established the Bill team on 22 December 2008. This was undertaken with the participation of representatives of the Ministry of Justice, the Ministry of Home Affairs, the Ministry of Finance, the Government Office, the Ministry of Information and Communications, the Central Committee of the Vietnam Fatherland Front, and experts and scientists from central and local levels.

In order to form the framework for the Bill, the Bill team proposed three fundamental issues upon which the Bill should focus. Firstly, the Bill must establish a legal basis to ensure the right of access to information by citizens and organisations based on the regulation of the responsibilities of the state agencies to provide information and the types of information. Secondly, the Bill must regulate the general procedures to request information and a

method to provide information when receiving a request from the public. The Bill must also facilitate the exercise of the right of access to information by citizens and organisations. Thirdly, the Bill must prescribe measures to enhance the supervisory capacity of state bodies and all citizens and organisations in implementing the access to information right.⁵⁹⁷ In addition, the Bill must adopt the appropriate specifications on the access to information of the relevant UN conventions and take into account the experiences of other countries.

An important step in the pre-legislative stage is to assess the impact of the Access to Information Law. Based on the principle of maximising the interest and minimising the cost for each provision, the Impact Assessment Report of the Access to Information Law was written in order to evaluate the effects of six aspects: (i) the necessity of having a law on access to information, (ii) the agencies and organisations which have a duty to provide the information, (iii) the officers and staff who have an obligation to provide the information, (iv) the mechanism to supervise and monitor the implementation of the Access to Information Law, (v) the mechanism to identify and classify information, and (vi) agencies and organisations which are required to have a website.⁵⁹⁸ The Impact Assessment Report was made with reference to the relevant reports of the Ministry of Justice, the Ministry of Information and Communications, the Ministry of Home Affairs, the National Department of Statistics, the Article 19 organisation, and the experiences of the UK, South Korea, Thailand, Mexico, and the Philippines.

The Ministry of Justice played a key role in the Bill team and held several seminars and workshops during the pre-legislative stage with the participation of domestic and foreign experts in order to discuss the experience of some developed and developing countries in drafting the

⁵⁹⁷ The Ministry of Justice, *The introduction of the Access to Information Law (2009)*: 5.

⁵⁹⁸ Ministry of Justice, *The Report on the Impact Assessment of the Access to Information Bill, (2009)*: 3.

Access to Information and Freedom of Information Acts. The experiences from countries which share major similarities with Vietnam in terms of social, political, economic, and regional conditions, such as China, Thailand, Indonesia, India, South Korea, and Japan, were specifically considered. In 2009, when the Access to Information Law was first drafted, the Vietnam Lawyers' Association (VLA) made their contribution by providing research about 'the law on access to information of some developed countries' to the Ministry of Justice and the Bill team. However, the research was then briefly mentioned in the Report of the Ministry of Justice to the Government and National Assembly in the following terms: 'The Bill team has seriously read the research of the Vietnam Lawyers' Association.'⁵⁹⁹ The participation of the VLA during the pre-legislative stage of the Bill in 2009 is a notable feature, although the impact was unclear because the Bill team did not clarify what points in the research of the VLA were accepted or rejected.

In order to obtain more input from the public, the Bill and relevant documents, including the Impact Assessment Report and the Report of the Ministry of Justice on the Bill, were published on the website of the Ministry of Justice for public consultation. The period for public consultation was no later than 9 July 2009 for the consideration of the Bill team and no later than 20 July 2009 for the final edition before sending the draft to the government.⁶⁰⁰ The consultation time was divided into two periods for those who wanted to have a say during the period of initial development of the Bill and for those who wished their comments to go to the Bill team in the final stage before submitting the Bill to the government. Dividing the consultation time into two phases was a progressive and helpful point in the process of public consultation. However, the public consultation process on the website of the Ministry of Justice in this instance made no sense because the documents

⁵⁹⁹ The Report of the Ministry of Justice on the Access to Information Law (2009): 5.

⁶⁰⁰ Public consultation for the Access to Information Bill, website of the Ministry of Justice, <http://moj.gov.vn/dtvppl/Lists/Danh%20sch%20d%20tho/View_Detail.aspx?ItemID=34>, accessed 10 February 2015.

were actually uploaded on the internet site after the due date for public consultation.

The file on the website indicated that the drafting of the Bill and the explanatory note file received their final draft on 22 July 2009,⁶⁰¹ and the period for public comments started from 9 July 2009. There were only two public comments on the website about the Bill from the representative of the Fatherland Front of Quang Nam province and one from Ms Duong Kim Nhung, a lay person. Both of the comments were sent to the Bill team after the due date as part of the public consultation of the Bill team.⁶⁰² The inconsistency of information and lack of comprehensive cooperation between the Bill team and the department which is responsible for publishing drafting documents for public consultation on the internet site of the Ministry of Justice made the process of public consultation on the Bill largely ineffective. Therefore, there were not many public comments on the Bill. Two public comments for such an important Bill regarding the political rights of people on the website of the Ministry of Justice can be judged to be an unsuccessful consultation with very little evidence of public engagement.

The current method of conducting public consultation during the pre-legislative stage does not actually encourage and facilitate public participation in reviewing and commenting on a Bill.⁶⁰³ Accordingly, the Bill team merely publishes the full version of the draft and an explanatory note on the website. Taking into account that the level of legal knowledge of lay people, in general, is still low, reading hundreds of pages of a legal document is not an easy task and not one which can be expected to be done without

⁶⁰¹ The Access to Information Law files,

<http://moj.gov.vn/dtvppl/Lists/Danh%20sch%20d%20tho/View_Detail.aspx?ItemID=34>, access February 10, 2015>, accessed 10 February 2015.

⁶⁰² The comment of the representative of the Fatherland Front of Quang Nam province was sent on 19 January 2010 and the comment of Ms Duong Kim Nhung sent on 10 June 2010.

⁶⁰³ Fieldwork, Interviewee B4.

some assistance. The Bill team should highlight the main points which need more input from the public, either in the explanatory note or a separate introduction paper on the website.⁶⁰⁴ However, the limits on public consultation also come from the inactivity of the CSOs because they did not in this instance actively and effectively participate in the process when the draft was published on the website of the Ministry of Justice or send their opinions to the public media during the drafting process. Other methods and channels that CSOs can use to participate in the legislative stage which were analysed in Section 2.2.4 of Chapter 2, such as organising a conference to help the Bill team collect information or sending supportive evidence and expert analysis to the Bill team, were not used in the pre-legislative stage of the Access to Information Bill.

4.2.3.2 The legislative stage

At the legislative stage, the Ministry of Justice, as the coordinator of the Bill team, systematised the opinions from the public and experts in order to draft the Bill and the explanatory note of the Bill and then sent it to relevant ministries, local agencies, and CSOs for their further comments. The comments, of which there were twenty-six, mostly came from the state agencies (the list of the state agencies was not provided by the Ministry of Justice), and were sent back to the Ministry of Justice at this stage.

In general, the legislative stage of the Access to Information Law follows the legislative process which was analysed in section 1.4.3 of Chapter 1. Because the law will regulate the political rights of people, which are clearly important, the legislation stage of the Access to Information Law of Vietnam attracted the attention and participation of some organisations from developed countries. In the legislative phase, several foreign CSOs and foreign entities contributed their comments to the Bill. In particular, the Norwegian Embassy, which has conducted bilateral dialogue talks on human

⁶⁰⁴ Fieldwork, Interviewee D3.

rights since 2003, advised the Bill team on how to verify the scope of the Bill and the implementation provision of the law in order to avoid abuse of the right in practice. The UK Embassy and the US Agency for International Development (USAID) also contributed their opinions on the process of making the impact assessment report on the Bill. Based on the experience of drafting and implementing Freedom of Information legislation, the UK Embassy and USAID gave the Bill team comprehensive advice on some aspects of the Bill, including defining the type of state bodies which are required to provide information to the public, the estimated cost of drafting the law, the supervision and implementation mechanism, and the expected positive and adverse impacts.

One of the important steps in the legislative stage is for the Assessment Committee of the Ministry of Justice to carry out the Bill assessment before submitting the draft to the government. In the assessment process, the opinions of the public and expert advice should be incorporated in order to assess the contents of the Bill. However, the shortage of public opinion via the website of the Ministry of Justice in the pre-legislative stage of the Access to Information Law affected the legislative stage, and no public opinion were expressly mentioned. Thirteen opinions presented at the meeting of the Assessment Committee were all recognised in the report under the name of the individual committee members.⁶⁰⁵ In many cases, this situation can be explained because public opinion had been transferred into the comments of the committee members. However, it is argued that a more transparent and accurate method is required to recognise and respond to the CSOs and public opinion rather than using unattributed transfer as the option for Assessment Committee members. The reports on any stages of the assessment or discussions should reflect the opinions of particular individuals or organisations in recognition of their contributions.⁶⁰⁶

⁶⁰⁵ Ministry of Justice, The report of the meeting of the Assessment Committee on the Access to Information Bill, dated 9 July 2009.

⁶⁰⁶ Fieldwork, Interviewee B2.

As the analysis in section 3.3.3, after the assessment at the legislative stage, public comment could still be an important source of input which the Bill team needs to take into account before presenting the final draft to the government and the National Assembly. Therefore, at this stage, the public, including individuals and organisations, could send their opinions about the draft or provide more information directly to the Bill team or to the Government Office and Parliament Office in order to contribute to the verification stage of the Bill during the parliamentary stage. In addition, the public could also use public media and legal journals to express their opinions.

One of the significant contributions of the public to this phase of the Access to Information Bill was from the research of the Human Rights Research Centre and the Comparative Law Centre of Hanoi National University entitled *Access to Information: the Regulations and Practice in Some Countries and Vietnam*.⁶⁰⁷ This research includes the basic concept of the access to information; experiences on drafting the access to information regulations of some countries such as Norway, India, Denmark, and Switzerland; and a global survey of Privacy International of the law on freedom of information. The scope of the research is also about the necessity and the proposed regulations for access to information in Vietnam, and the related history, from experts and researchers. Part of the research has been published through the conference 'Approaching the Access to Information Law' which was held by the Law Faculty of Hanoi National University on 31 March 2011.

Several CSO conferences and forums were also held at this stage to receive more public opinion, such as the workshop on the Access to Information Law of the Ministry of Justice and the United Nations

⁶⁰⁷ The Human Rights Research Centre and the Comparative Law Centre of Hanoi National University, *Access to Information: the Regulations and Practice in Some Countries and Vietnam*, Hanoi, National University Publishing (2011).

Development Programme in Vietnam,⁶⁰⁸ the Youth Forum on the Access to Information Bill,⁶⁰⁹ and the online forum of the Vietnam Chamber of Commerce and Industries for the Access to Information Bill.⁶¹⁰ The conference and forums of CSOs attracted researchers, and young people also contributed their opinions. However, most of the opinions concentrated on analysing and proposing the process and procedure to access and request information, the requirement of setting criteria to distinguish the confidential and non-confidential information, and establishing a declassification timeline of social, economic information in order to avoid the abuse of excessively marking the information as confidential. However, because the Bill was taken out of the legislative schedule of the National Assembly from 2009 until March 2016, the result of the conference and opinions of some CSOs on the legislative stage did not have a chance to make an impact.

In the 10th meeting session of the National Assembly term XIII in November 2015, the Bill was placed back on the schedule of the National Assembly. The opinions and evidence which the public and CSOs had contributed to the Bill team were brought back to the National Assembly table. Some new consultation activities were also organised to provide the Bill team and members of the National Assembly with more opinions and evidence in order to reconsider the Bill and make their decision on passing or declining to pass the law at the next plenary session. In 2015 and 2016, the number of conferences and consultancy activities of the public related to the Bill was

⁶⁰⁸ The workshop on the Access to Information Law of the Ministry of Justice and the United Nations Development Programme in Vietnam was held in Hanoi on 15–16 December 2014.

⁶⁰⁹ The Youth Forum on the Access to Information Law associated with the World Bank, Vietnam Television, Y-leader group was held in Hanoi, Danang and Thai Nguyen on 14–17 November 2014.

⁶¹⁰ The online forum of the Vietnam Chamber of Commerce and Industries for the Access to Information Bill, <<http://www.vibonline.com.vn/Forum/Topic.aspx?ForumID=232>>, accessed 15 February 2015.

high. The activities were diverse, including the conference on ‘The Law on Freedom of Information, Lessons for Vietnam from International Experience’ of the Legislative Study Institutions and the Law Faculty of Vietnam National University;⁶¹¹ an online Q&A session of the Law newspaper in Ho Chi Minh City about the Access to Information Bill;⁶¹² the conference on ‘The Right to Access Information by Citizens and the Freedom of the Press’ of the Press Association in Hoa Binh province and the Centre for Media in the Education Community;⁶¹³ the conference on the Access to Information Bill of the National Assembly Office, the Law Faculty of Vietnam National University, and the People's Participation Working Group (PPWG);⁶¹⁴ the public consultation session on the Access to Information Bill of the Judicial Committee of the National Assembly, Ministry of Justice, and USAID;⁶¹⁵ and the ‘Right of Access to Information Festival’ of the Faculty of Information and Library of the University of Social Sciences and Humanities and the Centre for Education Promotion and Empowerment of Women.⁶¹⁶

An analysis of the results of the activities for public consultation on the Access to Information Law at the legislative stage during 2015 to 2016 highlights some important points. First, the public and CSOs became more active in the law-making process than during the 2009–2010 period. The active attitude and participation values of the legislation were expressed

⁶¹¹ The conference on ‘The Law on Freedom of Information, Lessons for Vietnam from International Experience’, held on 2 October 2015 in Hanoi.

⁶¹² Online Q&A session of the Law newspaper in Ho Chi Minh City about the Access to Information Law on 20 July 2015, <<http://plo.vn/thoi-su/giao-luu-truc-tuyen-tiep-can-thong-tin-goc-nhin-cua-cong-dong-xa-hoi-569540.html>>, accessed 21 March 2016.

⁶¹³ The conference on ‘The Right to Access Information by Citizens and the Freedom of the Press’, held on 25 February 2016 in Hanoi.

⁶¹⁴ The conference on the Access to Information Bill, held on 21 November 2016 in Hanoi.

⁶¹⁵ The public consultation session on the Access to Information Bill, held on 10–12 March 2016 in Vinh Phuc.

⁶¹⁶ The ‘Right to Access to Information’ Festival, held on 27 February 2016 in Hanoi.

through a number of public consultancy activities for the Bill and the diversity of participants. The participation of the CSOs and other social organisations such as the Centre for Media in the Education Community of the Vietnam Union of Science and Technology Associations, the People's Participation Working Group,⁶¹⁷ the Centre for the Educational Promotion and Empowerment of Women,⁶¹⁸ and the Youth Union in the consultancy activities regarding the Bill is a significant feature at this stage. The opinions of CSOs on the Bill at the legislative stage during 2015–2016 when the Bill was re-considered were important because they provided practical and up-to-date views to the Bill team and members of the National Assembly before the law was passed on 6 April 2016.

Second, in addition to the CSOs, the participants of seminars, conferences, and other activities for public consultation also consisted of

⁶¹⁷ The People's Participation Working Group (PPWG) is a forum in Vietnam for organisations and professionals, donors, government employees, NGOs, project managers, consultants, and researchers to meet and exchange information and ideas on issues relating to people's participation, grassroots democracy, and civil society. The specific objectives of the group are to (i) enhance the exchange of information and coordination amongst PPWG members, (ii) advocate and promote an enabling environment for effective people's participation in the development and poverty-reduction process of Vietnam, and (iii) facilitate dialogue and improved understanding of people's participation experiences and lessons learned among different stakeholders (the state, civil society, international organisations, and the donor community).

⁶¹⁸ The Centre for the Educational Promotion and Empowerment of Women (CEPEW) is a local NGO in Vietnam, founded by the Vietnam Association for Promoting and Supporting Educational Development. CEPEW works with local people (women and men), leaders, authorities, and mass organisations at all levels to (i) improve people's awareness of gender and women's human rights, and to mainstream gender into community development programmes/projects; (ii) empower women, and promote women and men, to equally participate in the process of community development and equitably enjoy the benefits of development; and (iii) provide consultancy services and advocate for gender-sensitive policies and women's human rights protection.

government officers, researchers in legal institutions and in legal education entities, the Chief Editor of the Legislative Study Journal, officers of the Department of Civil Judgement Enforcement, and members of the Judicial Committee of the National Assembly. The participation of government officers or Bill team members in the seminar, conference brought the views of CSOs into the Bill and vice versa, and provided the participants of conferences with the views of the Bill team. However, two matters which are mentioned in section 3.3.1.2 of Chapter 3 were not solved effectively. These two matters are the comprehension of the outcomes of the conferences and public consultation sessions, and the recognition of the outcomes in the documents of the National Assembly regarding the drafting of the law.

First, the impact from the outcomes of the conferences and public consultation sessions about the Access to Information Law was still limited for several reasons: the narrow framework of the conferences, which focused mainly on the structure and terminology of the Bill; the overlapping modules of the conferences about the lessons from international regulations about freedom of information and access to information; and incomplete suggestions. For instance, in the five months from October 2015 to March 2016, four conferences on the Access to Information Law were held on the same theme: discussing the Bill with reference to the international experience.⁶¹⁹ The overlapping content of the conferences to some extent limited the quality of the outcomes of the events. For instance, a paper about

⁶¹⁹ The four conferences were the conference on 'The Law on Freedom of Information, Lessons for Vietnam from International Experience' of the Legislative Study Institutions and the Law Faculty of Vietnam National University on 2 October 2015, the conference on the Access to Information Law of the National Assembly Office, the Law Faculty of Vietnam National University, and PPWG on 21 November 2015, the conference on 'The Right of Access to Information with reference to International Experience' of the Jurisprudence Institution of the Ministry of Justice on 21 January 2016, and the conference on 'The Right to Access Information by Citizens and the Freedom of the Press' of the Press Association in Hoa Binh province and the Centre for Media in the Education Community on 10–12 March 2016.

The Experience of India in Drafting the Access to Information Act was presented in two of the four conferences. There was also a similar pattern in framing the content of the conferences.

One of the reasons for these limits comes from funding restrictions. Some conferences for public consultation about the Bill were organised based on the financial support of international funds. Therefore, in some instances, the content of the conferences was framed in accordance with the research desires of the sponsors, which sometimes overlapped⁶²⁰ However, the consultation conferences about the Bill in which the content was affected by the research plans of the sponsors were not dominant. Therefore, the capacity of CSOs and other legal education entities to organise and frame the content of conferences should be enhanced. CSOs should also be more active in collecting evidence in order to make their analyses more comprehensive and should offer details rather make abstract comments.⁶²¹

Second, the recognition of the Bill team and members of the National Assembly of the opinions of CSOs at this stage was too limited. The opinions of the public, researchers, and CSOs during the legislative stage of the Access to Information Law did not receive official recognition by name in any reports of the government and the National Assembly. Therefore, measuring the effectiveness and participation of the CSOs at the legislative stage is not easy. Similar to the pre-legislative stage, the opinions of the public, researchers, and CSOs were summarised into a category of opinion named 'public opinion'. In the reports of the government and the Judicial Committee of the National Assembly presented in the 11th plenary meeting session of the National Assembly term XIII on 24 March 2016 on the Access to Information Bill, the CSOs' names were not mentioned, although some of the CSOs had actually participated in the public consultations and conferences on the Access to Information Bill. Indeed, two reports were written in the same format: 'There are opinions that ...', 'and the opinions of the

⁶²⁰ Fieldwork, Interviewee C4.

⁶²¹ Fieldwork, Interviewee C4.

government/the Judicial Committee to these issues are ...'.⁶²² No particular names of people, CSOs, and researchers who raised opinions were mentioned. This method has made CSOs feel uncertain about the results of their efforts to contribute their opinions to the Bill and, to some extent, has discouraged CSOs.⁶²³

4.2.3.3 The post-legislative stage

In Vietnam, generally, a new law needs six to twelve months to enter into force. However, because of the complicated content and effects of the law for society and state bodies, it is expected that the Access to Information Law will take twenty-four months to enter into force after its enactment.⁶²⁴ The twenty-four month period after the enactment will be used by the involved agencies to review and make their amendments or supplements to the current regulations. Because the scope of the Bill is to target the right of the public to access information, CSOs will potentially be one of the groups to benefit most during the implementation process of the law. Therefore, CSOs will be expected to be involved actively when that stage is reached.

4.3 Case study of the UK's Freedom of Information Act 2000

4.3.1 Overview

The Freedom of Information Act 2000 is an outcome of the development of the recognition of the right to request information from the government by the public in the UK. The Act was proposed to replace the Code of Access for Information 1994. This Code only provided for

⁶²² The report can be seen at:

<http://duthaoonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=448&TabIndex=2&TaiLieuID=2326>, accessed 24 March 2016.

⁶²³ Fieldwork, Interviewee B1.

⁶²⁴ The Report of the Ministry of Justice on the Access to Information Law (2009): 11.

improvements in policymaking and the democratic process by extending access to information⁶²⁵ but did not create a legal right to know.⁶²⁶ The Act is one of the tools which enhances the trust between the government and citizens. It also increases the accountability of the government and the quality of public administration by giving the public greater access to information about the working of the government and state agencies.⁶²⁷ However, similar to Vietnam, the Freedom of Information Act was also challenged by the hesitation of the government to welcome outside scrutiny of the information held by authorities,⁶²⁸ although several significant Acts relating to freedom of information already existed when the Freedom of Information Bill was proposed, including the Data Protection Act 1984, the Local Government (Access to Information) Act 1985, the Access to Personal Files Act 1987, the Access to Medical Reports Act 1988, the Access to Health Records Act 1990, and the Environmental Information Regulations 1992.

In February 1993, a Bill of Freedom of Information was introduced by Labour MP Mark Fisher and debated for a total of twenty-one hours in the House of Commons.⁶²⁹ However, the outcome was not as expected when the government opted for the Code of Practice on Access to Government

⁶²⁵ Gay, O., *The Code of Access for Information 1994*, Research Paper 97/69, Home Affairs Section, House of Commons Library, 3 June 1997.

⁶²⁶ Hayes, J., *A Shock to the System: Journalism, Government and the Freedom of Information Act 2000*, Reuters Institute for the Study of Journalism, University of Oxford, (2009).

⁶²⁷ Wadham J. and Griffiths J., *Blackstone's Guide to the Freedom of Information Act 2000* (2nd edn, New York: Oxford University Press, 2005): 2.

⁶²⁸ Interview with Maurice Frankel, Director of the Campaign for the Freedom of Information, <http://www.freedomofinformation.co.uk/index2.php?option=content&do_pdf=1&id=43>, accessed 7 April 2015.

⁶²⁹ The detail of the debate can be seen at <<http://hansard.millbanksystems.com/commons/1993/feb/19/right-to-know-bill>>, accessed 9 April 2015.

Information instead.⁶³⁰ The Code was non-statutory and applies to the civil service and associated public bodies with a similar Freedom of Information regime. Any complaints go to the Parliamentary Ombudsman.

Realising that a Bill on Freedom of Information can enhance the trust of the public in government, the Labour Party made a manifesto commitment in favour of freedom of information in the election of 1997. In 1996, Tony Blair MP presented a speech in which he expressed his personal pledge to entitle the public to government information and would leave it to the government to justify why information should not be released.⁶³¹ The manifesto in 1997 also promised to signal a cultural change which would make a difference to the way in which Britain is governed. A new relationship between the government and the people could be established in the model whereby the public are recognised as legitimate stakeholders in the running of the country.⁶³² The Labour Party kept its word when, in December 1997, David Clark, the Chancellor of the Duchy of Lancaster, produced a White Paper for the

⁶³⁰ The Campaign for Freedom of Information, <<https://www.cfoi.org.uk/about/>>, accessed 9 April 2015.

⁶³¹ Speech by the Rt Hon. Tony Blair MP, Leader of the Labour Party, at the Campaign for Freedom of Information's annual awards ceremony, 25 March 1996, can be seen at <<https://www.cfoi.org.uk/1996/05/speech-by-the-rt-hon-tony-blair-mp-leader-of-the-labour-party-at-the-campaign-for-freedom-of-informations-annual-awards-ceremony-25-march-1996/>>, accessed 7 April 2015.

⁶³² In the ninth commitment of the Labour Party in the Labour Manifesto 1997, the Labour Party said that 'We will clean up politics, decentralise political power throughout the United Kingdom and put the funding of political parties on a proper and accountable basis'. The Labour Party also committed itself to 'open government' as follows: 'We are pledged to a Freedom of Information Act, leading to more open government, and an independent National Statistical Service.'

<<https://www.cfoi.org.uk/1996/05/speech-by-the-rt-hon-tony-blair-mp-leader-of-the-labour-party-at-the-campaign-for-freedom-of-informations-annual-awards-ceremony-25-march-1996/>>, accessed 7 April 2015.

Freedom of Information Bill.⁶³³ The Bill set out its three main aims: to provide a right of access to recorded information held by public authorities, to create exemptions from the duties to disclose information, and to establish the arrangements for enforcement and appeal.⁶³⁴ However, the initial Freedom of Information Bill presented by the Labour Government was criticised as ‘an extremely weak draft bill’.⁶³⁵

Up to this period, people generally had two basic legal channels to access and receive information: the Data Protection Act 1998 (replacing the Data Protection Act 1984) and the Local Government (Access to Information) Act 1985. The Data Protection Act 1998 allows individuals access to data concerning themselves held by public authorities and private bodies.⁶³⁶ The Local Government (Access to Information) Act 1985 allows the public to attend meetings of local authorities and receive papers relating to such meetings of local authorities, including those of committees and sub-committees, unless the information is exempt.⁶³⁷ In addition, information can also be requested through Parliamentary works, which are Standing Orders of the Houses, and Parliamentary Questions. In the Standing Orders of the House of Commons for Public Business in 1997, for instance, after the procedures of electing the Speaker, introducing Members and arranging seating, and the arrangement and timing for the parliamentary schedule, a

⁶³³ Interview with Maurice Frankle, Director of the Campaign for the Freedom of Information,

<http://www.freedomofinformation.co.uk/index2.php?option=content&do_pdf=1&id=43>, accessed 7 April 2015.

⁶³⁴ Explanatory Notes of the Freedom of Information Bill, HL Bill 55-EN.

⁶³⁵ Campaign for Freedom of Information, <<https://www.cfoi.org.uk/about/>>, accessed 9 April 2015.

⁶³⁶ Section 7, Data Protection Act 1998.

⁶³⁷ Wadham J. and Griffiths J., *Blackstone's Guide to the Freedom of Information Act 2000* (2nd edn, New York: Oxford University Press, 2005): 35.

period for taking questions took place.⁶³⁸ The Standing Orders of the Houses are kept until 2016. The Standing Orders of the House of Commons for Public Business in 2016 still retains time for taking questions after the fundamental procedures: the election of the Speaker, Members' introduction and seating, and the arrangement and timing for the parliamentary schedule.⁶³⁹ Accordingly, Section 21 of the Standing Orders 2016 provides that questions shall be taken on Mondays, Tuesdays, Wednesdays, and Thursdays after private business and motions for unopposed returns have been disposed of. Thus, parliamentary questions allow MPs to use either oral questions or written questions to hold the government and ministers to account on Monday to Thursday after preliminary proceedings and private business.⁶⁴⁰ However, asking for information through parliamentary questions is not necessarily an effective method to obtain information because ministers have the right to refuse to answer questions if the answer takes up undue resources or if the questions relate to exempt matters such as the security service or trade secrets.⁶⁴¹ Therefore, enacting an Act to regulate the right of access to information by people is important because it would change the method by which people can request information to a more active and direct way.

4.3.2 The content of the Freedom of Information Act 2000

Regarding its structure, the Freedom of Information Act 2000 consists of eight parts with eighty-eight sections and eight schedules. Similar to the

⁶³⁸ Standing Orders, 1997,

<<http://www.publications.parliament.uk/pa/cm199899/cmstords/mstords.htm>>, accessed 4 May 2016.

⁶³⁹ Standing Orders, 2016,

<<http://www.publications.parliament.uk/pa/cm201516/cmstords/0002/toc.htm>>, accessed 4 May 2016.

⁶⁴⁰ Parliamentary Questions,

<<http://www.parliament.uk/about/how/business/questions/>>, accessed 4 May 2016.

⁶⁴¹ Part II, Freedom of Information Act 2000 UK.

Access to Information Law in Vietnam, the Freedom of Information Act was made to provide the fundamental principles for the public to access information held by public authorities, the conditions for refusing requests, the appeals process, the enforcement process, and miscellaneous and supplemental issues. The Act covers information which is held by a public authority in England, Wales, and Northern Ireland, and by nationwide public authorities based in Scotland. Information held by Scottish public authorities is covered by the Freedom of Information (Scotland) Act 2002. The eight parts and seven schedules of the Freedom of Information Act 2000 are as follows.

Part I provides the right of access to information held by public authorities and the conditions which the requesters need to fulfil. Part I of the Act also provides the fees and time for compliance regarding a request and the means by which any communication must be made.

Part II provides the exempt information and the basis upon which a refusal to provide information can be made. Generally, exempt information relates to national security, international relations, audit functions, health and safety, parliamentary privilege, and the formulation of government policy. The clear specification of exempt information in the Bill is one of the successful points which the legislators in the UK have made, and can be a useful lesson for Vietnam when drafting the Access to Information Bill.

Part III and Part IV provides the general functions of the Secretary of State, the Lord Chancellor, and the Information Commissioner and the enforcement of the Act.

Part V provides the circumstances in which an applicant or a public authority may appeal to the Information Tribunal against a decision notice, information notice, or an enforcement notice which has been served.

Part VI deals with historical records and records in the Public Records Office or the Public Records Office of Northern Ireland.

Part VII provides for amendments of the Data Protection Act 1998. One difference between the Access to Information Law in Vietnam and the Freedom of Information Act 2000 in the UK is that the Freedom of Information Bill in the UK was proposed when several Acts relating to the right of access to information had already been made. Therefore, in order to create a unified framework regulation for freedom of information, Part VII of the Freedom of Information Act makes some amendments relating to personal information held by public authorities and extends the meaning of 'data' in the Data Protection Act 1998. Schedule 6 of the Act also makes further provisions to extend the Data Protection Act 1998 to include relevant personal information processed by or on behalf of the House of Commons and the House of Lords.

Part VIII provides some miscellaneous and supplementary matters including the power to make provisions relating to environment information, the power to amend or repeal enactments prohibiting the disclosure of information, and the disclosure of information between the Commissioner and Ombudsmen.

Important points in the content of Freedom of Information Act which could be taken as useful lessons for Vietnam are the clear distinction between disclosable and exempt information, and a broader range of the right to request information. With regard to the first point, Part II of the Freedom of Information Act has clarified twenty-three types of information which can be exempted from public access such as information which relates to national security, international relations, health and safety, the environment, and personal details. Clarifying the area of non-accessible information and recognising the types by law makes the provisions transparent and reduces the abuse of power by the state agencies. It also helps to highlight the principle of the Act that people have by default the right

to access official information. The information should be kept confidential only when there is a good reason and it is permitted by the Act. The disclosure of information should be the default position, and all requests from journalists, local residents, public authority employees, and foreign researchers should be treated equally.⁶⁴²

The second notable point in the content of the UK Act is that the range of requesters who can request access to information under the Freedom of Information Act extends to all people and organisations regardless of nationality. All people and organisations can request information through a clear written request with the precise name of the applicant and an address for correspondence.⁶⁴³ The distinction between disclosable and exempt information and the right to request information applies to all people and organisations as long as the request satisfies the requirement of Section 8 of the Freedom of Information Act. This feature was confirmed by the Information Tribunal in *S v. Information Commissioner and the General Register Office*.⁶⁴⁴ In this case, the appellant's brother died suddenly on 20th November 2004. His partner, with whom he lived and was intending to marry, came and registered the death at the Northampton Registry Office on 25th November 2004. Her qualification for being the informant was given as 'present at the death'. The appellant stated that this registration took place without the knowledge of the deceased's family. Therefore, the appellant claimed that the death certificate was factually inaccurate and deprived the family of their right to be recorded as the ones who had registered the death. Although after an investigation, the General Register Office declined to amend the certificate and the Commissioner was deemed right to conclude that the disputed information was exempt from disclosure under the Freedom

⁶⁴² Freedom of Information,

<<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>>, accessed 15 March 2015.

⁶⁴³ Section 8, Freedom of Information Act 2000.

⁶⁴⁴ *S v. Information Commissioner and the General Register Office*, Appeal number: EA 2006/0030, 9 May 2007.

of Information Act 2000 by reason of Section 41 of the Act, the Information Tribunal confirmed the foregoing principle as follows.

We wish to emphasise at this point that the Freedom of Information Act is applicant and motive blind. A disclosure under [the] Freedom of Information Act is a disclosure to the public [i.e. the world at large]. In dealing with a Freedom of Information request there is no provision for the public authority to look at from whom the application has come, the merits of the application or the purpose for which it is to be used. Consequently, there is no provision for the public authority to create conditions of use pursuant to a Freedom of Information Act disclosure or to indicate that such disclosure should be treated in confidence.⁶⁴⁵

The confirmation of the Information Tribunal also reflects the commitment of the government to implement the freedom of information principle in the UK and ensure the effectiveness of a remedial system which the people can trust. In order to ensure the right of access to information under the Freedom of Information Act, the Information Commissioner was established as an independent public regulator to uphold information rights in the public interest and promote openness by public bodies and data privacy for individuals under the Data Protection Act 1998, the Freedom of Information Act 2000, the Privacy and Electronic Communications Regulations 2003, the Environmental Information Regulations 2004, and the INSPIRE Regulations 2009. The independent status of the Information Commissioner is underlined by a Framework Agreement between the Ministry of Justice and the Information Commissioner which sets out the respective responsibilities of the Ministry of Justice and the Information Commissioner to support the work of both organisations, and to ensure the Commissioner's independence, propriety, and value for money.⁶⁴⁶ A further advantage of this office is that the Information Commissioner was

⁶⁴⁵ Paragraph 80, *S v. Information Commissioner and the General Register Office*, Appeal number: EA 2006/0030, 9 May 2007.

⁶⁴⁶ The introduction of the Framework Agreement between the Ministry of Justice and the Information Commissioner, 15 September 2011.

transformed from the prior Data Protection Commissioner. The combination of the functions of protecting information and implementing the right of access to information by people can be considered an efficient method of information management. The Information Commissioner thus becomes an effective tool for balancing the public interest with regard to the disclosure or non-disclosure of information.⁶⁴⁷ Consequently, the activities of the Information Commissioner would be a useful model for Vietnam.

4.3.3 The contribution of civil society organisations to the drafting process of the Freedom of Information Act 2000

4.3.3.1 The pre-legislative stage

Before the Bill was introduced in Parliament, it was the subject of pre-legislative scrutiny by two parliamentary committees: the ad hoc Select Committee of the House of Lords and the Public Administration Select Committee of the House of Commons.⁶⁴⁸

In the Public Administration for the White Paper of the Select Committee, the Committee welcomed written evidence and witnesses from public agencies and CSOs. Many public agencies such as the Parliamentary and Health Service Ombudsman, the Chancellor of the Duchy of Lancaster, and the Freedom of Information Unit of the Cabinet Office showed their responsibility and cooperation with the Committee by providing witnesses for questions related to their working areas.⁶⁴⁹ CSOs, especially the Consumers' Association and the Campaign for Freedom of Information, also actively

⁶⁴⁷ Wadham J. and Griffiths J., *Blackstone's Guide to the Freedom of Information Act 2000* (2nd edn, New York: Oxford University Press, 2005): Preface.

⁶⁴⁸ History of the Freedom of Information,
<<http://www.ucl.ac.uk/constitution-unit/whatis/foi>>, accessed 12 May 2015.

⁶⁴⁹ Minute of evidences,
<<http://www.publications.parliament.uk/pa/cm199798/cmselect/cmpubadm/398-i/398i01.htm>>, accessed 29 April 2015.

presented their opinions and evidence based on their practical experiences. The Consumers' Association⁶⁵⁰ brought views on three issues: the necessity to enact the Bill from the perspective of a CSO, the commercial prospects of pharmaceutical companies when consumers have a greater range of information on which to base their judgements, and the links between the enactment of the Freedom of Information Bill and the change to the Drugs Act.⁶⁵¹

Based on the experience of a CSO working with consumers, the Consumers' Association confirmed the importance of passing the Freedom of Information Act because 'it will hopefully improve the decision-making process and also allow consumers to make informed decisions'. Further, the Consumers' Association said that the regulations on freedom of information would assist them to obtain information about the marketing of medicines and information about how licences are granted and revoked. The Freedom of Information Act could also repeal Section 118 of the Medicines Act to make information available so that a CSO could see how decisions are made. Consequently, the Bill could make the processes in the pharmaceutical industry significantly more transparent.⁶⁵²

⁶⁵⁰ The Consumers' Association is a registered charity based in the UK. The charity's aim is to promote informed consumer choice in the purchase of goods and services by testing products, highlighting inferior products and services, raising awareness of consumer rights, and offering independent advice.

⁶⁵¹ Question numbers 442 to 501 were co-examined by the Head of Public Affairs, the Senior Policy and Development Officer of the National Consumer Council, and Mr B. Middleton, Head of Policy Research and the policy officer of the Consumers' Association during an examination of the Bill on 31 March 1998, Public Administration.

⁶⁵² Question numbers 442 to 501 were co-examined by the Head of Public Affairs, the Senior Policy and Development Officer of the National Consumer Council, and Mr B. Middleton, Head of Policy Research and the policy officer of the Consumers' Association during an examination of the Bill on 31 March 1998, Public Administration.

The Campaign for Freedom of Information was also invited to respond to sixty-three questions by the Public Administration of the House of Commons. The representative of the Campaign for Freedom of Information contributed wide and detailed input on ten main issues and several sub-issues. The evidence and opinions covered a broad range of information including: the incentives for disclosure of information, the negotiations with the European Community to implement the Freedom of Information Bill, the relationship with a third-party holder of information and how to trace the third party in case they moved house, the relationship between the Bill and the Data Protection Act, the issues of the cost and application fee, and the harm test.⁶⁵³

The debates of the Committee contributed many significant ideas and made many crucial proposals for amendments to the Bill. For example, in the first revision on 28 September 2000, 368 amendments were made. Such amendments, including the amendment to the use of language and the amendment to the content of regulations, were made by proposals from Members of the House of Lords.⁶⁵⁴ In the second revision, 368 amendments were further proposed by Members of the House of Lords.⁶⁵⁵ In order to have a balanced view of the draft Bill, seven representatives of the Home Office, CSOs, researchers, and the media participated in the oral evidence taken by the House of Lords. The participants included representatives of the Home Office, the Office of the Information Commissioner and Ombudsman of Ireland, the Campaign for Freedom of Information, the Advisory Board to DG XIII, and the Guardian Newspaper together with the Countess of Mar and Professor Peter Hennessy.⁶⁵⁶ The oral evidence provided evidence to the Home Office in response to its consultation exercise on the draft Bill. Written

⁶⁵³ The House of Commons, Public Administration on 20 January 1998, <<http://www.publications.parliament.uk/pa/cm199798/cmselect/cmpublicadm/398-iii/398iii01.htm>>, accessed 1 May 2015.

⁶⁵⁴ The Revised Marshalled list of Amendments to be moved in committee, HL Bill 55-I(Rev).

⁶⁵⁵ Second Marshalled list of Amendments to be moved in committee, HL Bill 55-II.

⁶⁵⁶ First report, Draft Freedom of Information Bill of the House of Lords, 27 July 2009.

submissions were also sent to the Commons Public Administration Committee.

Among the CSOs and media who participated in the pre-legislative stage of the Freedom of Information Bill, the Campaign for Freedom of Information played the most important role. In the 1960s and 1970s, the Movement for Freedom of Information campaign became stronger and created pressure to have an organisation to work informally to advocate a parliamentary Bill.⁶⁵⁷ In January 1984, a professional civil society organisation was launched to promote the Freedom of Information Bill, named the Campaign for Freedom of Information. In the pre-legislative stage, the role of the Campaign for Freedom of Information is significant. The Campaign played a central role in persuading the government to introduce the Freedom of Information Bill and strengthened it in Parliament.⁶⁵⁸

The Campaign for Freedom of Information participated in the consultation activities for the entire process of the proposal, from the White Paper to the Freedom of Information Bill. The focal point in the activities of the Campaign was to shape the frame for a public interest test before a decision is taken to disclose information.⁶⁵⁹ The public interest test provided MPs and authorities with more information and enabled their decisions to be balanced between the requirement to have a tool for government to regulate the legal issue and the public interest. It was initially proposed that the test should be applied only on a voluntary basis by the bodies holding the information. However, the Campaign successfully asked for an independent

⁶⁵⁷ Tant, A.P., *The campaign for freedom of information: a participatory challenge to elitist British government*, Public Administration 68, No. 4 (1990): 481.

⁶⁵⁸ Campaign for Freedom of Information, <<https://www.cfoi.org.uk/about/>>, accessed 9 April 2015.

⁶⁵⁹ Hayes, J., *A Shock to the System: Journalism, Government and the Freedom of Information Act 2000*, Research of Reuters Institute for the Study of Journalism, University of Oxford, (2009): 5.

arbiter such as the Information Commissioner to examine the public interest in instances where qualified exemptions were applied.

The public interest test is also one of the important points in the Freedom of Information Act which means that the Act can be implemented more effectively than the Access to Information Act in Vietnam. The public interest test contributes to the creation of a clearer line between 'yes' and 'no' with regard to the disclosure of information, especially in the instance of exempt information under Section 35 of the Act.⁶⁶⁰ Section 35 was applied 8,000 times between 2005 and 2015 in the context of providing information for 400,000 requests under the Act which have been received by central government⁶⁶¹ and which were required to have the public interest test applied. The test was mentioned in Section 35 of the Act and is based on the factor of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.⁶⁶² In brief, the public interest test is the consideration that 'in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration'.⁶⁶³ In accordance with this principle, the public interest test is difficult to justify; thus, there are proposals for more concrete guidance regarding the test. For instance, in the Report of the Special Rapporteur to the General Assembly on the right to access information in 2013, the Rapporteur suggested that 'state parties should proactively put in the public domain government information of public interest, and that, in ensuring access to such information, States parties should also enact the

⁶⁶⁰ Section 35 of the Freedom of Information Act 2000 provides that information held by a government department is exempt information if it relates to: (a) the formulation or development of government policy, (b) Ministerial communications, (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or (d) the operation of any Ministerial private office.

⁶⁶¹ Independent Commission on Freedom of Information Report, March 2016.

⁶⁶² Subsection 4, Section 35 of the Freedom of Information Act 2000.

⁶⁶³ Principle 13, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Article 19.

necessary procedures, such as by means of freedom of information legislation'.⁶⁶⁴ The 'necessary procedure' for the public interest test which was mentioned in Report A/68/362 was explained more concretely in General Comment No. 34, Article 19 about freedom of opinion and expression by the UN Human Rights Committee as follows: 'The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.'⁶⁶⁵ However, the public interest test will vary according to the nature of the exemption. There is not any concrete guidance for the test and the factors to justify the public interest are decided on case-by-case basis.⁶⁶⁶

Initially, the White Paper proposed that the Bill should not contain exempt categories because the public interest in having information available outweighs the harm test in the Code of Practice; moreover, this approach showed the scope of the Bill to make government open and accountable.⁶⁶⁷ The government argued that the absence of specific categories of exempt information would not cause a problem. In other words, the exclusions and exemptions proposed in the White Paper are equivalent to the coverage of the Official Secrets Act. Thus: 'The harm tests under the Official Secrets Act are tightly defined in terms of specific outcomes and are sufficiently stringent

⁶⁶⁴ Paragraph 28, Report of the Special Rapporteur to the General Assembly on the right to access information (A/68/362).

⁶⁶⁵ Paragraph 19, General Comment No. 34, Article 19 about freedom of opinion and expression of the UN Human Rights Committee (CCPR/C/GC/34).

⁶⁶⁶ Mathieson, K., *The Freedom of Information Act: is it working?*, Communications Law, No. 4 Vol.11 (2006), 132–135.

⁶⁶⁷ Session 3.5, Chapter 3, the White Paper: Your Right to Know, CM 3818.

that they would readily count as amounting to the Freedom of Information Act's "substantial harm" if breached.⁶⁶⁸

The Campaign for Freedom of Information did not agree with the argument of the government. It argued that the test under the Official Secrets Act should be used to examine whether a disclosure of information would 'endanger' the interest relating, for example, to international relations. Further, the test under the Official Secrets Act does not clearly refer to 'substantial harm' with the purpose of examining the public interest to make decisions about providing information.⁶⁶⁹ In order to shape a framework for the public interest test, the Campaign for Freedom of Information proposed a more substantial test so that if an authority seeks to withhold information, the authority must show that the information is exempt and that the public interest in keeping the exempt information confidential is greater than the public interest in its disclosure. If the authority cannot meet both of these tests, the information must be disclosed.⁶⁷⁰

The argument of the Campaign for Freedom of Information was recognised to be more persuasive than the initial proposal of the government in the Freedom of Information White Paper; thus, the Select Committee on Public Administration agreed with the point that 'the reason some disclosures may be an offence under the Official Secrets Act arises from their

⁶⁶⁸ Select Committee on Public Administration Third Report, <<http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmpubadm/398-vol1/39812.htm>>, accessed 15 April 2015.

⁶⁶⁹ Select Committee on Public Administration Third Report, <<http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmpubadm/398-vol1/39812.htm>>, accessed 15 April 2015.

⁶⁷⁰ A Short Guide to the Freedom of Information Act and Other New Access Rights, The Campaign for Freedom of Information, <https://www.cfoi.org.uk/pdf/foi_guide.pdf>, accessed 15 April 2015.

unauthorised nature rather than any actual damage they may cause'.⁶⁷¹ Therefore, the Committee recommended that the interests protected by the Official Secrets Act should not prevent disclosure if the disclosure is not capable of being prevented under either the harm test or public interest test.⁶⁷² Consequently, the participation and contribution of the Campaign for Freedom of Information at the pre-legislative stage made a significant change and added value to the drafting process of the Bill. In addition, the Campaign for Freedom of Information urged the government to extend the number of information holders required to provide information to the public, especially by providing some coverage of the police and establishing some rights of appeal to a Tribunal in the draft Bill. The changes to the Bill were explained as 'the result of a serious erosion of the right of access under clause 8 by a series of exemptions and an expansion of the discretionary power to disclose under clause 14 where the right of access does not apply'.⁶⁷³

4.3.3.2 The legislative stage

The legislative process of the Freedom of Information Act 2000 followed the full drafting process in both the House of Commons and the House of Lords. The Freedom of Information Bill was first introduced in the House of Commons on 18 November 1999. There were fourteen sittings at the committee stage to discuss the Bill before passing it to the Report and Third Reading on 2 April 2000. The introduction stage in the House of Lords started right after the Third Reading of the House of Commons. The Bill was

⁶⁷¹ Select Committee on Public Administration Third Report, <<http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmpubadm/398-vol1/39812.htm>>, accessed 15 April 2015.

⁶⁷² Select Committee on Public Administration Third Report, <<http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmpubadm/398-vol1/39812.htm>>, accessed 20 April 2015.

⁶⁷³ House of Lords, Draft Freedom of Information Bill - First Report, session 1998–99.

scrutinised through three readings and four sittings at the Committee stage before being enacted.

In order to encourage greater openness in the public sector and contribute more information to the forthcoming debates about the freedom of information at the legislative stage, the Advisory Group on Openness in the Public Sector was established in 1999 to advise the Home Office on how it might facilitate a cultural change to foster greater openness in the public sector.⁶⁷⁴ The Advisory Group consisted of members from various professional and organisational backgrounds, including representatives of the Local Government Association, the National Association of Local Councils, the Association of Chief Police Officers, the British Medical Association, the Health Service Confederation, Universities UK, and the National Association of Governors and Managers.⁶⁷⁵

Taking advantage of its specific knowledge, the Advisory Group made its report and recommendations to the Secretary of the Home Office about the need to make a cultural change regarding freedom of information and implement a Freedom of Information Act. The Advisory Group also recommended an action agenda for the Home Office in order to bring the Freedom of Information Bill before Parliament and encourage public authorities to begin planning immediately for the implementation of the Bill rather than delaying until the Bill was passed.⁶⁷⁶ The Advisory Group was invited to assist the implementation of the Freedom of Information Act not

⁶⁷⁴ Advisory Group on Openness,

<http://hansard.millbanksystems.com/written_answers/2000/apr/12/public-sector-advisory-group-on-openness>, accessed 26 April 2015.

⁶⁷⁵ Annual report on proposals for bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force,

<<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/imp/annrep01.htm>>, accessed on 24 April 2015.

⁶⁷⁶ History of Freedom of Information,

<<http://www.ucl.ac.uk/constitution-unit/whatis/foi>>, accessed 12 May 2015.

only at the legislative stage but also at the post-legislative stage. The group met at least three times a year until the Act was fully implemented.

In particular, the activities of the Advisory Group provided advice to the Lord Chancellor for the preparation of the annual report to Parliament in accordance with Section 87(5) of the Freedom of Information Act 2000 by 'monitoring progress on implementation, identifying the best practice in information management and recommending approaches to its dissemination in and between types of public authorities, advising on the needs of users of the Freedom of Information Act, how authorities might best meet those needs, and proposing ways of raising the public's awareness of their rights, receiving reports on, and advising on, the preparations being made by the Information Commissioner to ensure procedures are established and guidance produced in a timely manner, [and] promoting a new culture of transparency in public authorities by assisting in the development of training and education programmes'.⁶⁷⁷

In a different way to the legislative process of the Access to Information Law in Vietnam, the participation of CSOs in the legislative stage of drafting and scrutinising the Freedom of Information Bill in the UK was not as active as the pre-legislative stage. The report of the meetings in the Reading and Committee stage of the Freedom of Information Bill published online by Hansard⁶⁷⁸ and the Parliamentary hard-copy documents in the Parliamentary Archive about the Freedom of Information Bill⁶⁷⁹ only reflect

⁶⁷⁷ Advisory group for the FOI Act,

<<http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/foi/imp/annrep01.htm>>, accessed 27 April 2015.

⁶⁷⁸ Hansard Reference,

<<http://www.publications.parliament.uk/pa/cm199900/cmstand/b/cmfree.htm>>, accessed 14 April 2015.

⁶⁷⁹ The Parliamentary hard-copy documents for the Parliamentary Archive about the Freedom of Information Bill No: Official Publication British Parliament House of Lords Bill 1999-00 55-IIb, 1999-00 55-III, 1999-22 55-EN.

the opinions of the Members of the Houses. The Members of both Houses provided numerous opinions about amending the content of the Bill, and all such opinions were recognised under the name of the individual Member of a Committee or Member of a House. This situation was also mentioned by a participant of the UK fieldwork in that the role and participation of CSOs mainly affected the pre-legislative and post-legislative stages, while the legislative stage is the period when all the activity was created, and focused on, the ideas of the Members of Parliament.⁶⁸⁰ The activities of the Information Commissioner in the UK can be a useful lesson for Vietnam because the government should not only give people the right of freedom to information but also give them a channel to help them to implement the right. The Information Commissioner works as the UK's independent body which upholds information rights in the public interest and promotes openness by public bodies and data privacy for individuals.⁶⁸¹

4.3.3.3 The post-legislative stage

The Freedom of Information Act 2000 received Royal Assent on 30 November 2000 and came into effect on 1 January 2005. With regard to post-scrutiny, it is necessary to examine three main questions about the implementation of the Act: Does the Freedom of Information Act work effectively? What are the strengths and weaknesses of the Freedom of Information Act? Is the Freedom of Information Act operating in the way in which it was intended?⁶⁸² In order to prepare for post-legislative scrutiny, the Ministry of Justice prepared a Memorandum for the preliminary assessment of the Freedom of Information Act 2000 and submitted it to the Justice Select Committee. In the scrutiny, the oral and written evidence of the post-

⁶⁸⁰ Fieldwork, Interview E1.

⁶⁸¹ About the Information Commissioner,
<<https://ico.org.uk/about-the-ico/who-we-are/>> accessed 10 May 2016.

⁶⁸² Post-Legislative Scrutiny of the Freedom of Information Act 2000,
<<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/foi/>>, accessed 12 May 2015.

legislative scrutiny of the Freedom of Information Act 2000 of the Justice Committee was considered in seven days: 21 and 28 February 2012, 14 and 27 March 2012, 17 April 2012, and 15 and 16 March 2012.

The opinions of the Justice Committee had contributed to the drafting and implementation stages of the Act and raised serious considerations to the government. In *The Government Response to the Justice Committee's Report: Post-legislative Scrutiny of the Freedom of Information Act 2000*,⁶⁸³ the government had made their response carefully to seven main issues which were raised by the committee: (i) the objectives of the Act; (ii) costs and fees; (iii) delays and enforcement; (iv) vexatious requests and types of requesters; (v) policy formulation, safe spaces, and the chilling effect; (vi) the pre-publication exemption and the health and safety exemption; and (vii) the commercial exemption and the application of freedom of information to outsourced public services. In the response, the government clearly expressed its views on each issue and noted its agreement or disagreement. For instance, the government agreed with the committee that targeted charging would be difficult and burdensome for enforcement⁶⁸⁴ but disagreed with the view that publishing the names of requesters would have a positive impact either on transparency or reducing the burdens of the Freedom of Information Act.⁶⁸⁵ Moreover, based on the analysis, the government gave its recommendations as its concluding opinions. For example, the government recommended that all public bodies subject to the Act should be required to publish data on the timeliness of their response to freedom of information requests.⁶⁸⁶ Thus, a twenty day extension should be put into statute and a further extension should only be permitted when a third party external to the organisation responding to the request has to be consulted.⁶⁸⁷ The response

⁶⁸³ The Government Response to the Justice Committee's Report: Post-legislative Scrutiny of the Freedom of Information Act 2000, November 2012.

⁶⁸⁴ Paragraph 20 of the Government Response to the Justice Committee's Report: Post-legislative Scrutiny of the Freedom of Information Act 2000, November 2012.

⁶⁸⁵ Ibid, Paragraph 25.

⁶⁸⁶ Ibid, Paragraph 31.

⁶⁸⁷ Ibid, Paragraph 33.

of the government to the opinions of the Justice Committee in terms of the clearly presented agreements, disagreements, and recommendations are a useful example for Vietnam. According to the result of the fieldwork in Vietnam, clear responses from the government, the Bill team, or the National Assembly office, such as responses to the opinions of CSOs, the state agencies, or individuals, is an expectation of the interviewees.

The participants of the scrutiny were diversified. They included government agencies such as Leeds City Council; the Ministry of Justice; the Department of Health; the Department for Environment, Food and Rural Affairs; the Cabinet Office; representatives of public and health agencies such as the Deputy Information Commissioner and Director of Freedom of Information, the Information Commissioner's Office, the NHS Business Service Authority, the NHS South of England; some scholars such as professors and researchers from University College London, the University of Aberdeen, the Research Policy Network, Universities UK, Imperial College London, Lancaster University, and the Group Research and Enterprise Policy Group; and volunteer organisations and cross-party organisations such as Unlock Democracy and WhatDoTheyKnow. Public media were also invited to contribute their experiences. The respondents included BBC News, Evening Standard Ltd, and Independent Print Ltd.⁶⁸⁸

On 20 December 2011, the Justice Select Committee also launched a call for written evidence for its post-legislative scrutiny of the Freedom of Information Act. The result was that 140 pieces of written evidence and 37 pieces of oral evidence from the witnesses in seven evidence sessions about the implementation of the Act were sent to the Committee for scrutiny.⁶⁸⁹

⁶⁸⁸ Justice Committee – First Report on Post-legislative Scrutiny of the Freedom of Information Act 2000.

<Post-legislative Scrutiny of the Freedom of Information Act 2000>, accessed 4 May 2015.

⁶⁸⁹ Post-legislative Scrutiny of the Freedom of Information Act 2000 – Justice Committee Contents,

According to the submitted evidence, a number of aspects of the Freedom of Information Act were working well; however, several provisions still raised concern, including: the objectives of the Act, the costs and fees, the delays and enforcement, the vexatious requests and types of requesters, ways in which to make policy clear and accurate, 'safe spaces' to avoid the 'chilling effect' of disclosing information, pre-publication exemption and health and safety exemption, commercial exemption, and the application of Freedom of Information to outsourced public services.⁶⁹⁰

At the post-legislative stage, the Campaign for Freedom of Information was still active, especially in three areas: a campaign to defend and improve the Freedom of Information Act, policy and lobbying, and giving advice and information. The Campaign for Freedom of Information also provided briefings to parliamentarians, responded to government consultations, gave evidence to parliamentary committees on issues which had implications for Freedom of Information, and organised practical courses for information requesters so that everyone could approach the information properly and ensure that the Act is a more realistic proposition for people to use.⁶⁹¹ However, the practice of implementing the Act showed that such implementation needed a greater contribution from CSOs other than the Campaign for Freedom of Information. This was because the implementation of the Act attracted the public's significant attention and participation, especially journalists.

There is one point that the post-legislative scrutiny has not tackled sufficiently – the over-demand of information. Right after the enforcement of

<<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/96/9604.htm#a1>>, accessed 1 May 2015.

⁶⁹⁰ The detail of the issues can be seen at: Government Response to the Justice Committee's Report: Post-legislative Scrutiny of the Freedom of Information Act 2000 November 2012, Cm 8505.

⁶⁹¹ Campaign for Freedom of Information – Our work, <<https://www.cfoi.org.uk/about/our-work/>>, accessed 15 May 2015.

the Act, the demand for information was very high. The public could obtain diverse information such as details of restaurant hygiene reports, speeding police cars, parking fines, compensation payouts, attacks on authority staff, excluded pupils, staff suspensions, and expense claims.⁶⁹² Indeed, there are approximately 120,000 enquiries for information per annum.⁶⁹³ Such high demand under the Freedom of Information Act can be considered a success. However, this level of activity in the UK is a feature which Vietnam should take into account when drafting and implementing the Access to Information Law. It is claimed especially that the right to information can be overused by journalists as ‘a research arm for the media’. Moreover, requests from journalists tend to be more complex and consequently more expensive. Journalists are also more likely to seek internal reviews, which are time-consuming for officials who deal with such requests.⁶⁹⁴

The Bill team and the government encountered a dilemma when trying to balance the use of the right of the public and the use of the right of the media because ‘the Government did not introduce freedom of information in order to do something “for journalism”. We did it for the public. The job of the Government is not to provide page leads for the paper, but information for the citizen.’⁶⁹⁵ If the scheme for fee charging remains at the current rate, about sixteen per cent of the total costs of central government for freedom of information requests will be used for tracking information based upon the enquiries of journalists.

⁶⁹² ‘FOI – The First Year’, Press Gazette, 13 January 2006.

⁶⁹³ ‘Independent Review of the Impact of the Freedom of Information Act’, Reported for the Department for Constitutional Affairs by Frontier Economics, October 2006.

⁶⁹⁴ Independent Review of the Impact of the Freedom of Information Act: A Report Prepared for the Department for Constitutional Affairs, October 2006: 3.

The full report can be seen at

<<http://webarchive.nationalarchives.gov.uk/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>>, accessed 12 May 2016.

⁶⁹⁵ Speech by Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer of Thornton, Lord Williams of Mostyn Memorial Lecture, 21 March 2007.

Moreover, there are some requests received by departments which are not in the spirit of the Act. Enquiries are sometimes made which are a mixture of frivolous requests, disproportionately burdensome requests, and requests which are explicitly designed to test the compliance of the Act. For instance, a request for the total amount spent on Ferrero Rocher chocolates in UK embassies, a request from a vintage lorry spotter to 387 local authorities for the registration numbers of all vintage lorries held in their stock, a request for information on a sweater given to President George Bush by Downing Street, and a request for the number of eligible bachelors in the Hampshire Constabulary between the ages of 35 and 49, their e-mail addresses, salary details, and pension values.⁶⁹⁶ However, if the government introduced a new scheme for fee charging for enquiries, this would take the Act out of the reach of ordinary individuals. In contrast, the Information Commissioner has also received criticism from the media because there is a significant backlog of cases. According to the Head of Freedom of Information at the BBC, delays in requests being processed are the biggest problem. Some requests take two to three years to be processed, a situation which is obviously highly problematic for a journalist working to tight deadlines.⁶⁹⁷ The reason for this problem is based on the regulation of the Freedom of Information Act which states that public bodies are required to respond within twenty working days⁶⁹⁸ but significantly the time frame can be extended to allow for consideration of the release of information on the grounds of the public interest test, which in accordance with the regulation in Section 2 of the Act. However, the time frame for the public interest test is not given in detail. The role of CSOs should be clearer with regard to assisting the implementation of the Act in terms of continuing to review the Act and promoting the implementation of the Act in daily life.

⁶⁹⁶ 'Independent Review of the Impact of the Freedom of Information Act', Reported for the Department for Constitutional Affairs by Frontier Economics, October 2006.

⁶⁹⁷ Interview with Martin Rosenbaum, Head of FOI at the BBC, Jackson, E., *The Right To Know – Learning lessons from British and European Freedom of Information Law*, Reuters Foundation Paper, Trinity College, Oxford 2008.

⁶⁹⁸ Section 10, the Freedom of Information Act 2000.

4.4 Conclusion

Freedom of Information and the right of access to information is one of the fundamental political rights of the people in Vietnam and the UK. When the government is more open and transparent, citizens have greater opportunities to obtain the diverse information which can help them make more appropriate decisions. The participation of CSOs in the legislative process of the Freedom of Information and the Access to Information Act is crucial because it reflects the scope of laws which aim to make government more open and transparent.

This research found that the participation of CSOs in Vietnam is mainly active and effective in the pre-legislative stage. The participation of CSOs has provided insightful views, practical experience, and evidence for the Bill team and members of National Assembly. By contrast, the role of CSOs in the legislative process in the UK is much more active than in Vietnam, whereby one CSO may be assessed as a leading force for the drafting of a Bill. In addition, post-legislative scrutiny with the participation of CSOs is a useful lesson which Vietnam can learn from the UK. Post-legislative scrutiny helps Parliament and those who are involved in the implementation of an Act to examine the effectiveness, strengths, and weaknesses of the Act. Post-legislative scrutiny is also an opportunity for CSOs to express their views on the crucial question of whether an Act is operating in the way in which it was intended.

The case studies about the Access to Information Law in Vietnam and the Freedom of Information Act 2000 in the UK have examined the supposed values of participation and democracy in the law-making process. However, the value of effectiveness and efficiency in these case studies, especially the case study of the Access to Information Law in Vietnam, need to be enhanced. In addition, several points were raised by the case studies. First, the opportunities for CSOs to participate in the law-making processes through the cases are different. Because of the problem of limited communication channels between the Bill team and the public, and the

attitude of CSOs with regard to participating in the law-making process in Vietnam, CSOs have mainly participated in the legislative stage of the Access to Information Law. In the UK, the roles and participation of CSOs and the public in the pre-legislative stage of the Freedom of Information Act 2000 are much more effective.

The case studies have highlighted concerns about the practice of making law in Vietnam because although all participants of the fieldwork in Vietnam who work in CSOs, the National Assembly office, and the Government Office agreed that the pre-legislative stage is the 'golden time' for CSOs to make their impact and participate in shaping the Bill.⁶⁹⁹ Yet, the manner of facilitating the active participation of CSOs and the public in the pre-legislative stage of the Bill is still problematic. In addition, some reasons have been highlighted about the process of drafting the Access to Information Law, such as technology deficiencies, the time for CSOs to prepare their analyses, and the lack of incentive caused by the Bill team's non-recognition of CSO and public contributions.

The case study of the Freedom of Information Act 2000 of the UK has uncovered some additional practical lessons, especially through the examples of the Advisory Group, the Campaign for Freedom of Information, the Justice Select Committee, and the later review by the Independent Commission. Moreover, the participation of CSOs in the law-making process of the Freedom of Information Act 2000 was not only active but also diverse. The CSOs provided information and analyses, and even advised the Home Office on how it could facilitate a cultural change in order to bring greater openness to the public sector. CSOs such as the Campaign for Freedom of Information were also able to follow continuously the drafting process of the law and participate from the pre-legislative stage to the post-legislative stage.

⁶⁹⁹ Section 2.2.1, Chapter 2.

CHAPTER 5: THE PARTICIPATION OF CIVIL SOCIETY ORGANISATIONS IN THE LAWMAKING PROCESS WITH REGARD TO A SOCIAL RIGHTS LAW IN VIETNAM WITH REFERENCE TO UNITED KINGDOM – A CASE STUDY

5.1 The Introduction

Following the case studies in Chapter 4, Chapter 5 analyses the role and participation of CSOs, including their direct and indirect participation, in the law-making process of laws related to the social rights of citizens. The Law on Medical Examination and Treatment 2009 of Vietnam and the Health and Social Care Act 2012 of the UK are examined as case studies. Selecting cases about the law-making process of social rights laws provides the thesis with additional views to supplement the case study about political rights laws in Chapter 4. There are several reasons for this addition of case studies. First, drafting and passing a law in the political rights field may be a contradictory undertaking for a state because the laws on political rights can be tools to control the power of the state. By contrast, drafting a law which extends social rights for citizens can be more appealing to a state such as Vietnam built on collective ideals. Therefore, examining the processes of drafting both a political rights law and a social rights law can provide more diverse and comprehensive views for the questions of the thesis about why the participation of CSOs is important in the law-making process and how CSOs are facilitated to participate in the law-making process.

The comparison between the legislative processes of two Acts in two fields also answers some basic sub-questions of the thesis. For example, do the public and CSOs enjoy the same levels of facilitation and recognition from the respective Parliaments which enable them to participate in the legislative process? Do the Bills in the political and social rights areas receive the same attention and contributions from the public and CSOs? If not, to which regulatory field do people pay more concern? What is the role of CSOs in the legislative process? To what extent can CSOs have an impact on the

process of making laws? The answers to these questions are already examined already in the political field in Chapter 4. In Chapter 5, these questions are examined again in the social field and then compared with what has been examined in Chapter 4.

5.2 Case study of the Law on Medical Examination and Treatment 2009

5.2.1 Overview

The Communist Party and the government in Vietnam recognise that people's health is one of the important resources which contribute to the country's development, and since 2005 have pursued overall objectives for a strategy of protection, care, and health improvement for people in the forthcoming stage of national development. These objectives are to: 'Reduce morbidity, disability, and death caused by a lack of appropriate health care; improve public health; increase longevity; improve the quality of the national race; contribute to improving the quality of life and the quality of human resources; form a synchronised system of health care from the centre to local areas; and educate people about healthy habits.'⁷⁰⁰

Before adopting the Law on Medical Examination and Treatment 2009, the regulations on medical examination and treatment were provided in the Law on the Protection of People's Health 1989.⁷⁰¹ However, because social conditions have changed, many issues needed to be addressed and regulated by a more appropriate and comprehensive law on medical examination and treatment. In particular, in 1989 the Vietnamese economy began to be transformed from a subsidised economy to a market economy.

⁷⁰⁰ Resolution No. 46-NQ /TW dated 25 February 2005 of the Central Committee of the Communist Party on 'Strengthening the Protection, Care, and Health Improvement of People in the Forthcoming Stage of the Country's Development'.

⁷⁰¹ Law on the Protection of People's Health No. 21/LCT/HDNN8, dated 30 June 1989.

The Law on the Protection of People's Health⁷⁰² did not provide a legal basis for different economic sectors involved in medical examination and treatment, nor did it mention the diversification of the types of medical service and treatment. In addition, the legal regulations on medical examination and treatment in 2009, when the Law on Medical Examination and Treatment was drafted, were provided in several distinct legal documents which meant that the legal framework was unsystematic. For instance, besides the general provisions of the Law on the Protection of People's Health, the regulations about health protection for the elderly were provided in the Ordinance on the Elderly,⁷⁰³ the regulations about health care for wounded and disabled veterans were provided in the Ordinance on preferential treatments for veterans and persons who have contributed greatly to the Vietnamese Revolution,⁷⁰⁴ the regulations about health care for persons with disabilities were provided in the Ordinance on persons with disabilities,⁷⁰⁵ and the regulations about health care for children were provided in the Law on Child Protection, Care and Education.⁷⁰⁶ The spread of regulations provided in different legal documents made the application of the law on health care and medical treatment difficult. Therefore, drafting a unified and integrated Law on Medical Examination and Treatment reflected a demand for the development of medical treatment activities in Vietnam.

The new law was also necessary to enable Vietnam to meet the requirements of international integration in the medical field. In particular, being a member of the World Trade Organization and a potential member of the Association of Southeast Asian Nations (ASEAN) Mutual Recognition

⁷⁰² Law on the Protection of People's Health No. 21/LCT/HDNN8, dated 30 June 1989.

⁷⁰³ The Ordinance on the Elderly No. 23/2000/PL-UBTVQH10, dated 28 April 2000.

⁷⁰⁴ The Ordinance on Preferential treatments for veterans who have contributed greatly to the Vietnamese Revolution No. 36-L/CTN, dated 10 September 2004.

⁷⁰⁵ The Ordinance on Persons with disabilities, No. 06/1998/PL-UBTVQH10, dated 30 July 1998.

⁷⁰⁶ The Law on Child Protection, Care and Education No. 25/2004/QH11, dated 15 June 2004.

Agreement on Nursing Services,⁷⁰⁷ the ASEAN Mutual Recognition Agreement on Medical Practitioners,⁷⁰⁸ and the ASEAN Mutual Recognition Agreement on Dental Practitioners,⁷⁰⁹ Vietnam was required to have a more effective, unified, and concrete law which could recognise the international agreements on medical issues which Vietnam has signed and is bound by and reflect the integration of legal regulations on medical treatment in Vietnam.

Taking into account these factors, the Bill on Medical Examination and Treatment was presented to the 19th session of the National Assembly Standing Committee for review and comments prior to submission to the National Assembly during the 5th session of term XII in 2009. The Bill was prepared based on the core regulation of medical examination and treatment but combined the separate provisions in the different legal documents outlined earlier in order to create a new consolidated Law on Medical Examination and Treatment. The Law was passed in the 6th session of term XII of the National Assembly on 23 November 2009. On 4 December 2009, the President signed Law Order No. 17/2009/L-CTN in order to publish the law as the first Law on Medical Examination and Treatment, which are key activities in the health and medical services in Vietnam.

5.2.2 The content of the Law on Medical Examination and Treatment 2009

‘Equality’ is an element in the policy of medical treatment which the National Assembly required to be kept consistently in mind during the

⁷⁰⁷ The ASEAN Mutual Recognition Agreement on Nursing Service, signed on September 8, 2006, Vietnam has not ratified yet.

⁷⁰⁸ The ASEAN Mutual Recognition Agreement on Medical Practitioners, signed on February 26, 2009, Vietnam has not ratified yet

⁷⁰⁹ The ASEAN Mutual Recognition Agreement on Dental Practitioners, signed on February 6, 2009, Vietnam has not ratified yet

process of drafting the new Law on Medical Examination and Treatment. 'Equality' is also one of the keywords in Resolution No. 46-NQ /TW of the Central Committee of the Communist Party on 'Strengthening the Protection, Care, and Health Improvement of People in the Forthcoming stage of the Country's Development'.⁷¹⁰ Accordingly, the legal system should enable all people to access the medical system so that they enjoy their right to be protected and cared for by the medical system. However, until 2009, 'inequality' in granting a medical treatment establishment certificate still existed and raised concerns for the members of the National Assembly. For example, many medical clinics and hospitals in the state sector were allowed to operate even when they did not meet all requirements for a good standard of medical treatment meanwhile medical clinics in the private sector faced many difficulties when applying for a medical treatment establishment certificate because of the strict application of some conditions.⁷¹¹ These difficulties included the conditions for medical instruments and the conditions regarding sanitation and environment (such as the condition that the area devoted to planting trees on a site must be at least 35% to 40% of the entire site).⁷¹² Therefore, the factor of 'equality' with regard to issues such as the fairness of granting a medical practice certificate in the field of medical examination and treatment, the fairness of granting an operating licence to medical clinics, and the fairness of the opportunity to work in private medical clinics for those who work in the state sector, was highlighted as one of the

⁷¹⁰ Resolution No. 46-NQ /TW of the Central Committee of the Communist Party on 'Strengthening the Protection, Care, and Health Improvement of People in the Forthcoming Stage of the Country's Development', dated 25 February 2005.

⁷¹¹ The Ministry of Justice, the Law's outline: About the Law on Medical Examination and Treatment, Hanoi, 23 November 2009.

⁷¹² Circular No. 18/2013/TT-BYT on Conditions for the Medical Establishment of Location, Establishment, and Medical Instruments regarding Infectious Diseases, dated 1 July 2013.

key ideas to affect the content of the Law on Medical Examination and Treatment 2009.⁷¹³

The Law on Medical Examination and Treatment 2009 consists of nine chapters with ninety-one articles, including the following basic content.

Chapter I provides for some general provisions, including the scope of the law, a general explanation of terms, and the principles of medical practice and treatment; state policy on medical examination and treatment; state responsibility for managing medical treatment; and prohibited activities in medical practice and treatment.

Chapter II provides the right to have quality medical treatment, the obligation of patients to respect medical practitioners and the obligation to respect and comply with medical treatment provisions and pay the cost of medical treatment. Chapter II of the Law, therefore, lays down the legal foundation for the improvement of the rights of patients and the relation between patients and medical practitioners.

Chapters III and IV regulate the activities of hospitals, other medical establishments, and medical practitioners. The two chapters can be considered the most vital part of the medical treatment regulations. They set out the forms and conditions for all entities which want to operate medical establishments and establish the procedures to grant and withdraw operating licences for medical establishments and the medical practice certificate for medical practitioners. Remarkably, Chapter III, for the first time, provides the regulation of medical activities for humanitarian purposes in Vietnam.

⁷¹³ A guideline of discussions of the Secretarial Board of the meeting session of the National Assembly about the Medical Examination and Treatment Bill, dated 13 June 2009.

Chapters V and VI concentrate on the professional and technical regulations, and the application of new techniques to medical treatment activities. The two chapters also provide the conditions for the application of new techniques and methods to medical examination and treatment procedures in Vietnam.

Chapter VII deals with professional and technical mistakes, the settlement of complaints, and denunciations and disputes in medical examination and treatment and Chapters VIII, IX provide detailed conditions to ensure the implementation of the law. Finally, Chapter IX provides the effective date of enforcement and implementation of the law, namely from 1 November 2011.

5.2.3 The contribution of civil society organisations to the drafting process of the Law on Medical Examination and Treatment 2009

5.2.3.1 The pre-legislative stage

In order to prepare for the official meeting session of the National Assembly regarding the pre-legislative stage, local delegations of members of the National Assembly had organised several meetings at local level to discuss the Bill on Medical Examination and Treatment 2009. There were twenty-six reports from meetings of the local delegations of members of the National Assembly. These reports were sent to the Standing Committee and Bill team to prepare for the discussion at the official meeting session.⁷¹⁴ However, because the purpose of the meetings at local level was only to analyse preliminary opinions about the Bill, the discussions mainly focused on basic points. These included the name of the law, the scope of the law,

⁷¹⁴ According to The Medical Examination and Treatment Bill Report of the Standing Committee of the National Assembly No. 275/BC-UBTVQH12, up to 25 September 2009 twenty-six reports from local delegations of members of the National Assembly were sent to the National Assembly.

and the rights and obligations of the patients and medical practitioners, rather than offering detailed analyses of any specific content with appropriate evidence or making proposals. For example, at the meeting of the Hanoi delegation of members of the National Assembly to discuss the Bill, fourteen opinions were raised regarding the name of the law, the scope of the law, the conditions for being granted a medical examination and treatment licence, and the provisions about medical practitioners who work in the private sector.⁷¹⁵ The name and scope of the law, the provisions on medical practitioners who work in the private sector, the rights of patients, and medical ethics were also the main issues which were discussed at the meeting of the Ho Chi Minh City delegation of members of the National Assembly⁷¹⁶ and the meeting of the Bac Giang province delegation of members of the National Assembly.⁷¹⁷

One of the important documents at the pre-legislative stage was the Impact Assessment Report (IAR). The Ministry of Health was assigned to perform the core role in preparing the IAR. According to the provision of Article 55 of the Law on the Promulgation of Legal Documents, in the IAR, the Ministry of Health is required to address all issues and offer solutions to each issue, and analyse and compare the costs and benefits of these solutions.⁷¹⁸ The IAR of the Medical Examination and Treatment Bill was the first IAR for a Bill in the health and medical field based on the requirement of Article 55 of the Law on the Promulgation of Legal Documents. The IAR of the Medical Examination and Treatment Bill concentrated on evaluating and assessing the pros and cons of the different methods to regulate medical and

⁷¹⁵ <<http://www.daibieunhandan.vn/default.aspx?tabid=82&NewsId=84210>>, accessed 20 September 2014.

⁷¹⁶ The Medical Examination and Treatment Bill Explanation and Modification Suggestion Report of the Standing Committee of the National Assembly No. 275/BC-UBTVQH12, dated 15 October, 2009.

⁷¹⁷ <<http://www.bacgiang.gov.vn/ves-portal/9312/Hoi-nghi-dong-gop-y-kien-vao-Du-thao-Luat-kham-benh,-chua-benh.html>>, accessed 20 September 2014.

⁷¹⁸ The Law on the Promulgation of Legal Documents No. 80/2015/QH13, dated 22 June 2015.

treatment activities, the costs, and the potential risks for each option. In order to make the impact assessment for the Bill, the Ministry of Health invited the Health Strategy and Policy Institute and Pathfinder International⁷¹⁹ to be collaborators. The Health Strategy and Policy Institute is a research unit of the Ministry of Health. The Institute's mission is to provide evidence and advice to the Ministry of Health on health policy and strategy through its scientific research. The Institute also takes charge of international cooperation in the field of health policy and health care systems.⁷²⁰ Therefore, the cooperation between the Health Strategy and Policy Institute and Pathfinder International, an international CSO, was expected to become a prototype for improving the creation of an IAR for legislation in Vietnam. The IAR was produced in a logical method by identifying priorities based on clear criteria, determining the objectives of the key issues to be assessed, identifying the options and alternatives for controversial issues, determining the data and information which needed to be analysed, identifying the data collection methods, and reviewing and analysing the collected data.

At the pre-legislative stage of the Bill and the preparation for the IAR, the Ministry of Health and the Bill team also received support from foreign CSOs and international organisations such as the Australian Agency for International Development (AusAID), the Asian Development Bank (ADB), the World Bank (WB), Pathfinder International and the European Commission (EC). The assistance to the Bill team came in the form of legislative techniques and financial help of USD 226,000 from the

⁷¹⁹ Pathfinder International is a UK-based CSO working towards the goal of 'making advances in sexual and reproductive health and rights globally by catalysing change locally',
<<http://www.pathfinder.org/about-us/mission/?referrer=https://www.google.co.uk/>>,
accessed 10 June 2015.

⁷²⁰The regulation of the National Institute for Health Policy,
<<http://www.hspi.org.vn/vcl/CHuC-NaNG-NHIeM-Vu-t21-958.html>>, accessed 15 June 2015.

international organisations and international CSOs.⁷²¹ Such assistance improved the process of creating the Bill and enabled the enhancement of the capacity of the Bill team and the capacity for legislative tasks in the Ministry of Health. Specifically, the funding from AusAID made the legislative process of the Medical Examination and Treatment Bill different from other Bills. Around the same time, the average budget which the government committed to creating one law in 2009 was approximately VND 300 million (equal to USD 17,500). The support and cooperation between the Ministry of Health and the foreign CSOs and international organisations were part of the Hanoi Declaration on aid to Vietnam to achieve the development goals of Vietnam in 2010 and the Millennium Development Goals in 2015.⁷²² The Hanoi Declaration laid the foundation for the Ministry of Health to establish the Health Partnership Group with the listed partners in order to support the development of the health policy and health service.⁷²³ However, the foreign CSOs did not take undue advantage of their position as sponsors to interfere in the final decision and in the choices of the Ministry of Health and the Bill team with regard to shaping the content of the Bill. Besides financial support,

⁷²¹ The report on the legislative process of the Medical Examination and Treatment Act 2009 made by Pathfinder International in December 2009.

⁷²² The Hanoi Declaration on aid to Vietnam to achieve the development goals of Vietnam in 2010 and the Millennium Development Goals in 2015, signed on 2 June 2005, is an agreement between the Vietnamese government and donors to cooperate with each other. The aim is to implement activities in the development cooperation field for the improvement of aid effectiveness so as to support the implementation of the five-year Socio-economic Development Plan 2006–2010. The Hanoi Declaration transferred the main elements of the Paris Declaration on Aid Effectiveness, signed on 2 March 2005, into locally relevant terms. The Paris Declaration and the list of donors are provided at:

<<http://www.oecd.org/dac/effectiveness/34428351.pdf>>.

About the Hanoi Declaration can be seen at:

<<http://www.isgmard.org.vn/VHDocs/DocsPub/ARDSectorStrategyPolicy/Q%20&%20A%20on%20Hanoi%20Core%20Statement.pdf>>.

⁷²³ The General Agreement between the Ministry of Health and development partners in order to enhance aid in the health and medical field, signed in Hanoi on 31 March 2009.

the foreign partners also made significant contributions in helping to draft the IAR, but their impact was mainly on the legislative techniques rather than the process of shaping the content.

In order to collect diverse sources of information for the IAR, the Ministry of Health conducted consultations with experts in the health sector, experts in health policy, and representatives of the Government Office and the National Assembly Office. Further, the headquarters of some professional associations and CSOs such as the Vietnamese Medical Association, the Traditional Medical Association, and the Lawyers' Association were invited to contribute their opinions.⁷²⁴ However, all of the opinions from the experts and CSOs which contributed to the IAR were not recognised expressly in the report. The opinions were merged into the collective authorship of the report. This problem was mentioned in Chapter 4 as a common issue in the legislative process in Vietnam. Failing to identify contributors not only causes difficulty for the members of the National Assembly, who want to track the sources of information, but also to the readers and CSOs who want to show supporters and sponsors that they have had some influence.

Among the state research institutes and the CSOs which the Ministry of Health and the Bill team invited to take part in the pre-legislative stage, the role of the Health Strategy and Policy Institute was significant. In order to provide more information to the Bill team and the National Assembly, the Institute produced a research paper entitled *Eighteen Years of Implementing the Legal Regulations on Medical Examination and Treatment from 1989 to 2008* with the participation of twenty-three researchers. However, all of the researchers were from the Legal Department and the Department of Treatment of the Ministry of Health, and the Health Strategy and Policy Institute. The more independent CSOs, including the CSOs in the medical examination and treatment field, were not invited to participate in the research. The research covered a wide range of current provisions of

⁷²⁴ The Impact Assessment Report on the Medical Examination and Treatment Bill: 6.

medical examination and treatment in Vietnam and in some other countries, and particularly included the experiences of Russia, France, Malaysia, Thailand, and Zambia. The research also included the educational activities for the Medical Examination and Treatment legal regulations in three provinces (Ha Giang, Lam Dong, and Bac Giang), and the human resources for health care in Vietnam.

In general, as well as referring to the experiences of other countries, the research provided the Bill team and the members of the National Assembly with useful information, especially on the background context and the current situation of the health care service and health care management in Vietnam.. However, compared with the content of the Bill, the content of the research did not really focus on the main issues which the Bill team sought to know about. These issues included the need to form a National Medical Council to handle medical incidents or disputes, the conditions required to grant a medical practice certificate, and the nature of the medical and treatment establishment certificate. In addition, the research did not clarify the reason why three provinces, Ha Giang, Lam Dong, and Bac Giang, were chosen for case studies, and what specific lessons were learned from the medical regulations of Russia, France, Malaysia, Thailand, and Zambia in the context of the Medical Examination and Treatment Bill and regulations in Vietnam. For instance, were the countries and provinces chosen because of their similarities or differences in terms of institutional systems or just because of the availability of data and information?

Besides the work of the Ministry of Health on the IAR, the Bill team also invited the public and experts to express their views on the Bill. Some individuals who directly work and participate in managing activities in the medical field, such as the Director of the Trang An hospital and the Deputy Chair of the Hanoi Medical and Pharmaceutical Society, contributed their opinions of the Bill at a meeting held by the Ministry of Health. Such contributors made specific points about the provisions related to the rights and obligations of medical practitioners and patients, and the conditions for

working and related work licences.⁷²⁵ The Ministry of Health also sent letter No. 2966/BYT-PC to the Vietnamese Chamber of Commerce and Industry (VCCI) to ask for comments on the Bill.⁷²⁶ Responding to this letter, the VCCI made comments based on its members' specific experience that the Bill should include further provisions about the transparency of medical examination and treatment.⁷²⁷ However, in general, the role and participation of the public, especially CSOs, in the process of creating the Law on Medical Examination and Treatment was not as strong as the role of the state agencies, state research institutes, and foreign CSOs.

One of the reasons that limit the preparation for a Bill at the pre-legislative stage is the expenditure available for legislation.⁷²⁸ The cost of drafting laws and other normative documents in Vietnam in 2009, including the Law on Medical Examination and Treatment, was subject to Circular No. 100/2006/TT-BTC of the Ministry of Finance. This circular provided guidance on the management and use of the state budget to support legal document drafting.⁷²⁹ The cost of drafting laws consists of the expenditure on planning the legislative programme, the conferences and seminars within the legislative programme, the expense of developing the Bill, systematising the current legal regulations on the matters which the Bill is going to cover,

⁷²⁵ <<http://daidoanket.vn/PrintPreview.aspx?ID=2080>>, accessed 22 September 2014.

⁷²⁶ The Ministry of Health, Letter No. 2966/BYT-PC to the Vietnamese Chamber of Commerce and Industry (VCCI) to ask for comments on the Medical Examination and Treatment Bill, <<http://www.vibonline.com.vn/Forum/TopicDetail.aspx?TopicID=2283>>, accessed 25 June 2015.

⁷²⁷ VCCI <<http://www.vibonline.com.vn/Forum/TopicDetail.aspx?TopicID=2283>>, accessed 22 September 2014.

⁷²⁸ Fieldwork, Interviewee D1.

⁷²⁹ Circular No.100/2006/TT-BTC of the Ministry of Finance regarding guidance on the management and use of the state budget to support legal document preparation, dated 23 October 2006.

drafting the verification report, and publishing the draft law.⁷³⁰ Accordingly, the key state agency in drafting a law can spend up to VND 2 million to draft a proposal of a Bill, VND 5 million to draft a Bill, up to VND 1 million for each verification or research report, VND 250,000 for each summary report, VND 150,000 for the chair, and VND 70,000 for each participant of a seminar or workshop about a Bill. Thus, taking the standard rate for a standard Bill with ten versions, ten workshops and seminars with ten chairs and 500 participants, and thirty reports including two assessment reports of the Ministry of Justice and a relevant Committee of the National Assembly, the expenditure for drafting one law was about VND 120 to 150 million (equal to USD 6,729 at the exchange rate applicable on 11 May 2009).⁷³¹

After Circular No. 100/2006/TT-BTC of the Ministry of Finance regarding guidance on the management and use of the state budget to support legal document preparation, the cost of drafting laws and normative documents in Vietnam was changed to increase the expenditure rate. The relevant documents were Joint-circular No. 192/2010/TTLT-BTC-VPCP in 2010,⁷³² which was replaced by Joint-circular No. 92/2014/TTLT-BTC-BTP-VPCP in 2014 of the Ministry of Finance, the Ministry of Justice, and the Government Office regarding guidance on the preparation of cost estimates, and the management and balancing of state funds, for the drafting of legal documents and for refining the legal system.⁷³³ Essentially, Joint-circular No

⁷³⁰ Ibid, Section II.2.

⁷³¹ The exchange rate for USD to VND on 11 May 2009 was USD 1 to VND 17,832.31, < <http://www.exchange-rates.org/Rate/USD/VND/5-11-2009>>, accessed 16 July 2015.

⁷³² Joint-circular No. 192/2010/TTLT-BTC-VPCP of the Ministry of Finance, the Ministry of Justice, and the Government Office regarding guidance on the preparation of cost estimates, and the management and balancing of state funds, for the drafting of legal documents and for refining the legal system, dated 2 December 2010.

⁷³³ Joint-circular No. 92/2014/TTLT-BTC-BTP-VPCP in 2014 of the Ministry of Finance, the Ministry of Justice, and the Government Office regarding guidance on

92/2014/TTLT-BTC-BTP-VPCP increased by 50% the expenditure for legislative activities and increased by 43% to 52% the general budget for the drafting of normative documents compared with Joint-circular No. 192/2010/TTLT-BTC-VPCP.⁷³⁴ However, because of inflation, the actual increase of expenditure on drafting laws is still a concern.

According to Joint-circular No.92/2014/TTLT-BTC-BTP-VPCP, the responsible state agency for drafting the law can spend up to VND 4.5 million for drafting a proposal of a Bill, VND 12 million for drafting a Bill, up to VND 1.5 million for each verification or research report, up to VND 15 million for a full impact assessment report, VND 150,000 for the chair, and VND 100,000 for each participant of a seminar or workshop about a Bill. Thus, taking the standard rate for a standard Bill with ten versions, ten amendment reports, ten workshops and seminars with ten chairs and 500 participants, thirty reports including two assessment reports of the Ministry of Justice and a relevant Committee of the National Assembly, the expenditure for drafting one law was about VND 250 million (equal to USD 11,250 at the exchange rate applicable in July 2015 and equal to USD 11,190 at the exchange rate applicable on 12 May 2016).⁷³⁵ This relatively low rate of expenditure for legislation to some extent affects the preparation for a Bill at the pre-legislative stage, especially the capacity to organise seminars or invite experts and CSOs to contribute opinions.⁷³⁶

On June 2009, the Bill passed to the government to obtain approval before being sent to the National Assembly.

the preparation of cost estimates, and the management and balancing of state funds, for the drafting of legal documents and for refining the legal system replaced Joint-circular No. 192/2010/TTLT-BTC-VPCP on 14 July 2014.

⁷³⁴ The new policy, reported by the Ministry of Justice,

<<http://moj.gov.vn/ct/tintuc/Pages/van-ban-chinh-sach-moi.aspx?ItemID=5774>>, accessed 15 July 2015.

⁷³⁵ The exchange rate for USD to VND from Vietcombank on 17 July 2015 was USD 1 to VND 21,835, <<https://www.vietcombank.com.vn/ExchangeRates/?lang=en>>, accessed 15 July 2015.

⁷³⁶ Fieldwork, Interviewees A6, D1.

5.2.3.2 The legislative stage

At the legislative stage, a comprehensive scrutiny of the full content of the Bill was undertaken, mainly at the official meeting sessions of the National Assembly. The Medical Examination and Treatment Bill Explanation of the Standing Committee of the National Assembly recorded the in-depth discussion of the National Assembly on nine issues such as the structure of the law, the apprentice period of medical trainees, and the regulation of traditional medical practices and working licences.⁷³⁷ As the analysis in section 1.4.1 and section 2.2 revealed, verification and classification activities were conducted by the Social Committee of the National Assembly and the Ministry of Justice in order to assist the government and the members of the National Assembly understand the content of the Bill, especially the controversial issues, and the relation between the Bill and other laws in the legal system.

At the legislative stage, the Committee on Social Issues of the National Assembly was assigned to conduct Bill verification.⁷³⁸ The verification session included the participation of representatives from the Ethnic Council, the Defence and Security Committee of the National Assembly, the National Assembly Office and the Government Office. In order to prepare for the verification session, the Committee on Social Issues of the National Assembly organised several meetings with the local authorities in An Giang, Bac Ninh, Ha Nam, Lang Son, Thanh Hoa, Tien Giang, Hai Phong, and Ho Chi Minh City. Similar to the verification session in the legislative process of the Access to Information Law in Chapter 4, the participants of the

⁷³⁷ About Health Care, <<http://vneconomy.vn/thi-truong/du-luat-kham-benh-chua-benh-cong-tu-con-lam-ban-khoan-2009061502402549.htm>>, accessed 21 September 2014.

⁷³⁸ The Verification Report of the Committee on Social Affairs of the National Assembly on the Bill on Medical Examination and Treatment No. 1340/BC-UBXH12, dated 7 May 2009.

verification session concentrated on checking the name, structure, scope, and especially the feasibility of the Bill. Some controversial issues and recommendations on each issue, such as the distinction between the state sector and private sector in medical care, the recognition of traditional medicine, and the encouragement of public investment in medical care services, were also raised at the verification session. However, in the verification report of the Ministry of Justice on the Bill on Medical Examination and Treatment, the opinions of individual participants were not reflected.

The second activity to provide a Bill team and the members of the National Assembly with the views of legal experts is the Bill assessment of the Ministry of Justice.⁷³⁹ The assessment of the Ministry of Justice is the specific process whereby legal experts of the Ministry of Justice play the key role. The assessment of the Ministry of Justice in the legislative process is a vital step for the government's assessment of new legal issues before making a proposal for the new policy or making the decision to accept or not accept a proposal. In the assessment process of the Bill on Medical Examination and Treatment, the Ministry of Justice concentrated on addressing the need for the Bill and its structure, constitutionality, legality, and consolidation. Some specific and controversial aspects of the Bill were also examined in the assessment session, such as the state policies on medical care and treatment, the state policy to send medical students to rural areas to enhance the effectiveness of remote medical provision, and the nature of the national committee required to supervise the works of medical practitioners.

One of crucial tasks of the verification and assessment process is to scrutinise the compatibility of the law with the existing legal system and the controversial issues in each provision of the Bill. Because the National Assembly members have diverse backgrounds and not all of them have a legal background which enables them to understand legal matters in detail,

⁷³⁹ The Assessment Report of the Ministry of Justice on the Bill on Medical Examination and Treatment No. 372/BTP-PLSHC, dated 12 March 2009.

the verification and assessment process acts as a form of 'safeguard' for the National Assembly. The process also helps National Assembly members to make sure that the Bill which is presented to the National Assembly, especially in plenary sessions, is compatible with the existing legal system. In general, the assessment of the Ministry of Justice and the verification of the Social Committee of the National Assembly have similar targets. These are to examine the Bill and provide the government and the members of the National Assembly and the Bill team with the views of legislative experts. However, the two assessments of the bill are both essential because the assessments are from 'inside' the National Assembly (a Committee of the National Assembly) and 'outside' the National Assembly (the Ministry of Justice), thereby making the views more balanced and diverse. Using the legal compatibility analysis, the National Assembly members can pay more attention to policy content and controversial issues.

With regard to the Bill on Medical Examination and Treatment, the opinions from the verification and assessment activities were carefully considered by the Bill team. Many opinions from the Ministry of Justice in the assessment report were adopted in the Bill. For instance, the proposal to abolish the regulation in Section 2, part V in the Bill which established an obligation for medical students to serve a period of time in a remote area was accepted as a policy. The argument was that the development of a health care system should be based on a more comprehensive solution than merely sending medical students to such an area. The Bill team also has a right to refuse any proposal from the Ministry of Justice if it has a suitable reason to do so. In this instance, the right to make the final decision is in the hands of the government and the National Assembly. For example, the Ministry of Justice expressed concern about the structure and activities of the National Council of Medical Practitioners because these went beyond the regulations of the Law on the Organisation of the Government when established by the Prime Minister but under the supervision and management of the Ministry of

Health.⁷⁴⁰ However, the Bill team and the Ministry of Health retained these issues in the Bill when they submitted it to the government. However, the government later confirmed that the structure and activities of the National Council of Medical Practitioners went beyond the regulations of the Law on the Organisation of the Government.⁷⁴¹ The government also expressed its concern about the feasibility of the activities of the National Committee for Medical Examination and Treatment with regard to the Committee managing the huge workload of granting and re-granting working licences for practitioners. The Bill team and the Ministry of Health accepted the point of the government and edited the draft in order to create a new version of the Bill so that the government could approve it and pass it to the National Assembly. Because the verification and assessment reports are important to the members of the National Assembly in making their decision, it would be better if the Committee on Social Issues of the National Assembly and the Ministry of Justice had collected more opinions from the public and CSOs in order to strengthen and widen the views.

Following the verification and assessment process, the Bill entered official discussions in the National Assembly on 15 June 2009. The discussion of the members of the National Assembly for the Medical Examination and Treatment Bill included two sessions: the group session and the plenary session to vote for the Bill. A group session is equivalent to the committee stage at the legislative stage in the UK. In the National Assembly, 305 members are divided into seventeen groups based on the interests of each member and the Committee of the National Assembly to which they were assigned. However, the group discussion session of a Bill in Vietnam is purely an internal discussion among members of the National Assembly. Representatives of CSOs or experts are not invited to present their opinions or evidence in front of the group unlike the committee stage in

⁷⁴⁰ The Law on the Organisation of the Government No. 32/QH10, dated 25 December 2001.

⁷⁴¹ The report on the legislative process of the Medical Examination and Treatment Act 2009 made by Pathfinder International in December 2009.

the UK. The group session on the Medical Examination and Treatment Bill met on 4 June 2009.⁷⁴² After the group discussion, the Secretariat Board of the National Assembly meeting session had ten days in which to summarise the opinions of the participants and send a report to all members of the National Assembly before the plenary session of the National Assembly on the Bill on 15 June 2009.

In the group discussion, nineteen groups of issues were discussed by the members of the National Assembly including the name and scope of the law; the activities for granting the working licences for medical practitioners which are mentioned in Articles 17, 18, 19, and 20; the activities for granting the establishment certificates for the medical and treatment establishments which are mentioned in Articles 41, 42, and 43; the regulation of the activities of state medical practitioners in the private sector; the authority to grant, renew, and withdraw working licences; the forms of operation of the medical entities; and some issues related to state policies regarding the medical treatment and examination fields.⁷⁴³ Although a group discussion is just a preliminary discussion of a Bill, the members of the National Assembly present the issues and make suggestions with supportive evidence if the evidence is available. All the opinions in a group discussion are summarised and presented to the appropriate plenary discussion session of the National Assembly.

A group discussion saves discussion time at the plenary session and makes the plenary discussion session more efficient. With regard to the Bill on Medical Examination and Treatment, the result of the group discussion provided a preliminary view of the Bill and classified the content of the Bill into two groups. One group was the regulations. In this regard, the members

⁷⁴² The summary of opinions of the group discussion session by the Secretariat Board of the meeting session of the National Assembly, dated 26 June 2009.

⁷⁴³ Report on the Group Discussion on the Medical Examination and Treatment Bill, summarised by the Secretariat Board of the 5th Meeting Session of the National Assembly, dated 13 June 2009.

of the National Assembly essentially agreed with the suggestions of the Bill team. The regulations referred to issues such as the process to grant the working licences for medical practitioners and the name of the law. The second group included issues which the members of the National Assembly still disputed. These issues included whether the medical practice certificate should have nationwide or provincial validity; whether the conditions to be granted a practice certificate should include ethical criteria; and whether doctors and medical practitioners in the state sector should be allowed to establish a private hospital or private medical entities. The issues which received attention from the members of the National Assembly together with controversial opinions on the regulations of the Bill were then prioritised in the plenary discussion session.

In order to assist the leaders and members of the National Assembly to maintain their concentration in the plenary session for the Bill, the Secretariat Board of the meeting session summarised and highlighted some main issues which required further discussion. The team then sent the details to the members of the National Assembly before the commencement of the plenary discussion session. Regarding the Law on Medical Examination and Treatment, the Secretariat Board proposed eight issues to which the members of the National Assembly should pay attention: the name of the Law; the category of medical practitioners who need to obtain a medical practice certificate (whether medical practitioners in the public sector should obtain a medical practice certificate); the validity of the medical practice certificate; the duration of operation licences for medical treatment establishments (whether operation licences for medical and treatment establishments should be renewed every three or five years); the regulation of the work of state medical practitioners in the private sector; the authority to grant, renew, and withdraw the medical practice certificate; the forms of medical and treatment establishments; and the structure of the Bill.⁷⁴⁴

⁷⁴⁴ The summary of the Secretariat Board of the main issues which needed further discussion in the entire discussion session about the Medical Examination and Treatment Bill, dated 12 June 2009.

Based on the summary of the Secretariat Board of the main issues which needed further discussion, twenty-seven members of the National Assembly provided their further analysis in the plenary discussion session before the Bill came to the vote. For example, members of the National Assembly presented different opinions on the validity of the medical practice certificate. Le Minh Hong, a member of the National Assembly delegation in Long An province, argued that the National Assembly should abolish or amend the provision which divides the medical practice certificate into two types: the medical practice certificate granted by the minister of the Ministry of Health which can be used anywhere in Vietnam and the certificate granted by the head of a province which can be used only in the province.⁷⁴⁵ This provision can make the procedure to grant the medical practice certificate complicated, and increase the cost and time for the activity of granting the medical practice certificates in the entire country.⁷⁴⁶ The argument of Le Minh Hong persuaded other members of the National Assembly who at first held different opinions; thus, the Law recognised the opinion in Article 25, which provided that a medical practice certificate should be granted once and be valid nationwide.⁷⁴⁷ In the final step of the Medical Examination and Treatment Bill legislation, the Bill was discussed by all members of the National Assembly so that they could come to a final agreement about its content in a vote. The Medical Examination and Treatment Bill was passed on 23 September 2009 and officially became a law on 4 December 2009 in accordance with the Decision to Announce the Medical Examination and Treatment Law of the President of Vietnam.⁷⁴⁸

⁷⁴⁵ The National Assembly discuss the Law on Medical Examination and Treatment, <<http://www.moj.gov.vn/ct/tintuc/Pages/thong-tin-khac.aspx?ItemID=3936>>, accessed 23 July 2015.

⁷⁴⁶ Ibid.

⁷⁴⁷ Section 2, Article 25, Law on Medical Examination and Treatment 2009.

⁷⁴⁸ Decision to Announce the Medical Examination and Treatment Law of the President of Vietnam, No. 17/2009/L-CTN, dated 4 September 2009.

5.2.3.3 The post-legislative process

As shown by the analysis of the legislative process in section 1.4.3 and section 2.2.3, the crucial work in the post-legislative stage is to draft and issue the Decree of the Government and the circular of the related ministry in order to implement a law. In the post-legislative stage for the Medical Examination and Treatment Law, thirteen government decrees and Ministry of Health circulars have been issued from 2011 to 2014 to provide further implementation provisions. For example, Decree No. 87/2011/ND-CP of the Government on the Implementation of the Law on Medical Examination and Treatment, Decree No. 102/2011/ND-CP of the Government on Liability Insurance in Medical Examination and Treatment, Decree No. 176/2013/ND-CP of the Government on Sanctioning for Administrative Violations in the Field of Medical Examination and Treatment, Circular No. 41/2011/TT-BYT of the Ministry of Health Guiding the Granting of Practice Certificates to Medical Examination and Treatment Practitioners and Operation Licences to Medical Examination and Treatment Establishments, and Circular No. 30/2014/TT-BYT of the Ministry of Health Guiding the Conditions, Procedures, Necessary Documents, and Authority to Grant an Establishment Permission for Domestic and Foreign Organisations to Assist with Humanitarian Medical Examination and Treatment, and Technical Transfer in Medical Examination and Treatment. The dependence of the Law on such implementing documents reflects, to some extent, the imperfect design of the legislation and has prevented the full application of the law in practice right after it was passed and announced by a decision of the State President. Improvements in the prior stages would have helped to reduce the extent of this stage and the inevitable delays.

Among the aforementioned documents, the two most important for implementation were Decree No. 87/2011/ND-CP on Implementing the Medical Examination and Treatment Law 2009⁷⁴⁹ and Circular No.

⁷⁴⁹ Decree No. 87/2011/ND-CP of the Government on Implementing the Medical and Examination Treatment Law 2009, dated 27 September 2011.

41/2011/TT-BYT of the Ministry of Health. The latter provided the minister of the Ministry of Health and the Head of the provisional Department of Health with the power to establish a consultancy committee in order to verify the applications for medical examination and treatment establishment certificates and medical practice certificates.⁷⁵⁰ Decree No. 87/2011/ND-CP of the government provided the detailed regulations on the forms of health care and treatment entities of Chapter 2, the process to grant operation licences to health care and treatment entities in the state sector of Chapter 3, the process to grant working licences to health care and treatment practitioners in the state sector of Chapter 4, and the National Standards on Quality Management of health care and treatment entities of Chapter 5 of the Law.

With Circular No. 41/2011/TT-BYT, the Ministry of Health took the next step to specify the concrete procedures and conditions for granting medical examination and treatment establishment certificates to health care and treatment entities and medical practice certificates to practitioners. This circular of the Ministry of Health provided the minister of the Ministry of Health and the Head of the provincial Department of Health with the authority to establish a consultancy committee to assess applications for operation licences and working permits and to consult the Ministry and Departments about decisions. However, in this assessment process, the members of the Consultancy Committee and the Secretariat Board of the Committee only receive and accept evidence from state agencies such as the Legal Department of the Ministry of Health, the Department of Medical Examination and Treatment management, the Department of Science and Education of the Ministry of Health, and the provisional Department of Health. The absence of CSOs at both the Consultancy Committee and the Secretariat Board of the Committee should be addressed to some extent because CSOs could provide vital experience and expert information. Moreover, the participation of CSOs in the Consultancy Committee would also help the

⁷⁵⁰ Circular No. 41/2011/TT-BYT of the Ministry of Health on Providing the Concrete Procedure and Conditions to Grant Operation Licenses to Health Care and Treatment Entities and Work Permits to Practitioners, dated 14 November 2011.

CSOs to have a more comprehensive understanding about the policy and law on health, medical examination, and treatment, which would enable them to provide more effective assistance to the members of their organisations.

5.3 Case study of the UK Health and Social Care Act 2012

5.3.1 Overview

The National Health Service (NHS) was initially proposed in the Beveridge Report on Social Insurance and Allied Services in 1942⁷⁵¹ in order to provide free medical treatment which covered all requirements for all persons capable of profiting by it⁷⁵² with a clear twenty-year estimation for the social security budget.⁷⁵³ After six years, on 5 July 1948, the NHS was launched with the ambitious plan to bring health care to all people in the UK as a social service rather than a commodity for sale. The NHS is considered ‘the greatest gift a nation ever gave itself’⁷⁵⁴ when, for the first time, hospitals, doctors, nurses, pharmacists, opticians, and dentists were brought together under one organisation to provide services which were available to all people in the UK and financed entirely from taxation.⁷⁵⁵ Therefore, the NHS and its works draw significant attention from all of the political parties and all of the people in the country. In order to make a suitable comparison to the Medical Examination and Treatment law in Vietnam, the changes and challenges related to the Health and Social Care Bill 2010 are considered.

⁷⁵¹ Social Insurance and Allied Services (the Beveridge Report), CMND 6404 (HMSO, 1942).

⁷⁵² Ibid, Paragraph 19.

⁷⁵³ Ibid, Paragraph 28: the Social Security Budget was estimated to amount to £697,000,000 in 1945 in the first year of the plan and £858,000,000 twenty years after.

⁷⁵⁴ The Social Care Act and its timeline, <<http://www.kingsfund.org.uk/topics/nhs-reform/health-and-social-care-act-2012-timeline>>, accessed on 10 June 2015.

⁷⁵⁵ The origins of the NHS, the Cabinet paper 1915–1988, <<http://www.nationalarchives.gov.uk/cabinetpapers/alevelstudies/origins-nhs.htm>>, accessed on 10 June 2015.

In 2010, the Conservatives won power in a coalition government and made the next attempt to renovate the NHS system by presenting a paper *Equity and Excellence: Liberating the NHS*.⁷⁵⁶ The White Paper, *Liberating the NHS*, which the Secretary of State for Health presented to Parliament proposed to change the NHS to make it available to all, free at the point of use, and based on need. *Liberating the NHS* also proposed improvements to the service: putting the patients and the public first, for example, patients would have access to the information they want in order to make choices about their care and to rate hospitals and clinical departments;⁷⁵⁷ improving health care outcomes, for example, the NHS would be held to account against clinically credible and evidence-based outcome measures, thereby promoting innovation, ensuring better access for patients to effective drugs, and improving value for money;⁷⁵⁸ increasing autonomy, accountability, and democratic legitimacy; and cutting bureaucracy and improving efficiency, for example, the NHS would release up to £20 billion of efficiency savings by 2014 which would be reinvested to support improvements in quality and outcomes, radically simplifying the number of NHS bodies and radically reducing the Department of Health's own NHS functions.⁷⁵⁹

The process of drafting the Health and Social Care Act 2012 in the UK confronted certain obstacles because it was drafted by a coalition government of the Conservative Party and Liberal Democrat Party. However, this case study does not focus on political challenges; instead, it considers how CSOs participated in the law-making process of the Act. The Health and Social Care Bill set some major aims for the NHS. These included enhancing the power of, and placing duties on, the Secretary of State for Health in order to promote a comprehensive health service in England; establishing the NHS Commissioning Board to assist the Secretary of State to meet the

⁷⁵⁶ *Equity and Excellence: Liberating the NHS*, July 2010, Cm7881.

⁷⁵⁷ Paragraph 4, *Equity and Excellence: Liberating the NHS*, July 2010, Cm7881.

⁷⁵⁸ *Ibid*, Paragraph 5.

⁷⁵⁹ *Ibid*, Paragraph 7.

requirements outlined in the mandate; establishing Clinical Commissioning Groups to be responsible for commissioning local services; and placing a duty on Monitor as the economic regulator for all NHS-funded services. All providers of NHS healthcare services, unless exempted, would need to hold a licence with Monitor, which would maintain and publish a register of licence holders.⁷⁶⁰ The Bill also proposed to enhance the power of the consortia of general practitioners (GPs). GPs would have greater freedom to design services around patients in order to give the patients a better experience and quality of care. In addition, clinical and financial responsibility was intended to create incentives to ensure that commissioning decisions would provide value for money through efficient prescribing and referral patterns.⁷⁶¹

The White Paper opened consultation from July to October 2010. However, in March 2011, the Liberal Democrats called for activists to be allowed to draw up further amendments to the government's NHS reforms ahead of the legislation being debated in the Lords. However, the scheme for drafting the Health and Social Care Bill was changed at the legislative stage. Some CSOs, such as the King's Fund and NHS Future Forum, stated that 'the process of the government was in a rush, motivated by a concern to avoid New Labour's self-confessed mistake of failing to be bold in its first term'.⁷⁶² Baroness Shirley Williams, a key voice for the Liberal Democrats, also expressed her concerns about the structure and the content of the Bill:

'I read the Bill, I read the impact statements, the quality statements, all these huge documents. I have never ploughed through so much. I have been in politics a very long time and I don't think I'd ever seen a

⁷⁶⁰ BMA Parliamentary Unit, *What we know so far: Health and Social Care Act 2012 at a glance*, April 2012.

⁷⁶¹ The impact assessment report of the Health and Social Care Act 2012: 1.

⁷⁶² The King's Fund, *Never Again? The Story of the Health and Social Care Act 2012, a Story in Coalition Government and Policy Making* (London: Institute for Government and the King's Fund, 2012).

Bill that was so incomprehensible, so detailed, so long, so impossible to understand.⁷⁶³

Because the Bill received considerable opposition from CSOs and some Liberal Democrats,⁷⁶⁴ on 4 April 2011 the Prime Minister introduced a pause in the passage of the Bill through parliament in order to listen and respond to the concerns of stakeholders. The pause was also a chance for the Prime Minister to consider the drive for change in the NHS and determine whether the role of the Monitor should be based on a service which offers real choice and good quality for patients rather than competition.⁷⁶⁵ A pause on the Bill at that time was a chance to listen, reflect on, and improve the NHS modernisation plans. There was also a commitment not to take risks with ‘the most precious national asset’ and to encourage wider clinical involvement in order to make the Bill successful.⁷⁶⁶ Therefore, the Health and Social Care Bill was paused until 19 March 2012 before being presented to the House of Lords. The Bill received the Royal Assent on 27 March 2012.

5.3.2 The content of the Health and Social Care Act 2012

The Health and Social Care Act 2012 was proposed because of the demand for change in the health and social care system.⁷⁶⁷ Therefore, the Health and Social Care Act 2012 is an Act about the health and social care service in England. In general, the Act establishes an independent NHS

⁷⁶³ Ibid.

⁷⁶⁴ Ibid, 8, 97.

⁷⁶⁵ NHS Future Forum, ‘Choice and Competition - Delivering Real Choice, Report from the NHS Future Forum’, June 2011, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213749/dh_127541.pdf>, accessed 10 June 2015.

⁷⁶⁶ The King’s Fund, *Never Again? The Story of the Health and Social Care Act 2012, A Study in Coalition Government and Policy Making* (London: Institute for Government and the King’s Fund, 2012): 97.

⁷⁶⁷ HC Hansard, 31 January 2011, col. 605.

Board to allocate resources and provide commissioning guidance, increase GPs' powers to commission services on behalf of their patients, strengthen the role of the Care Quality Commission, and develop Monitor in order to regulate NHS foundation trusts. The Act also reduces the number of health bodies to help meet the Government's commitment to cut NHS administration costs by a third, including abolishing Primary Care Trusts (PCTs) and Strategic Health Authorities (SHAs).⁷⁶⁸

The Act includes twelve parts with 309 sections and covers a wide range of regulations on the health and social care service in England. Part 1 of the Act provides an overview of the health service in England including the NHS Constitution, the duty and function of the Secretary of State regarding the health service, the NHS Commissioning Board, and the role of the Board and commissioning in respect of emergencies. Part 2 provides further provision about public health. Part 3 addresses the regulation of health and adult social care services. Because the Act comprises two fields, health care and social care, the regulations in part 3 of the Act cover a wide range of the Monitor's activities. These are competition regarding supplementary and patient choice; the requirements, conditions, procedures, and enforcement of health providers' licences; and the price of health administration. Parts 4 and 5 of the Act provide for the NHS Foundation trust, the NHS Trusts, and public and local government involvement in health and social care work. Part 6 of the Act provides the list of those who offer pharmaceutical services and primary care services. Part 7 concentrates on the regulation of health and social care workers. Part 8 provides the establishment and functions of the National Institute for Health and Care Excellence. Part 9 of the Act regulates the health and adult care service information, especially regarding the Health and Social Care Information Centre. Parts 10 and 11 provide some miscellaneous provisions and the abolition of certain public bodies. Part 12 of

⁷⁶⁸ Summary of the Health and Social Care Act 2012, <<http://services.parliament.uk/bills/2010-12/healthandsocialcare.html>>, accessed 17 November 2014.

the Act contains some final provisions such as the power to make consequential provisions and financial provisions.

In general, the Health and Social Act 2012 is more comprehensive in the field of medical and health service than the Law on Medical Examination and Treatment 2009 of Vietnam. Besides some similar regulations in the Law on Medical Examination and Treatment 2009, such as licensing requirements, procedure and enforcement, and general provisions on medical and health service practice, the Health and Social Care Act contains many more specific provisions about the NHS and the social care workers of England. Three issues regarding the NHS which are tackled by the Act are rising demand and treatment costs; the need for improvement in standards because the NHS still falls behind other major European countries in some important areas, especially in cancer treatment; and the need to reform the state of public finances because the budget of the NHS was under pressure during this period.⁷⁶⁹ The Health and Social Care Act 2012 is claimed to make the NHS more responsive, efficient, and accountable in certain ways. First, the Act puts clinicians into the position of health service shapers, which enables NHS funding to be spent more effectively. Second, the Act supports innovative services so that patients are able to choose services which best meet their needs, including from charity or independent sector providers as long as they meet NHS costs. Third, the Act gives a greater voice for patients by establishing new Healthwatch patient organisations locally and nationally to encourage patient involvement. Fourth, the Act improves the public's health care through the activities of Public Health England. Fifth, the Act creates greater accountability locally and nationally. Sixth, the Act removes

⁷⁶⁹ The King's Fund, *Never Again? The Story of the Health and Social Care Act 2012, A Study in Coalition Government and Policy Making* (London: Institute for Government and the King's Fund 2012): 13, 70.

See also: The Health and Social Care Act 2012, Factsheet A1, updated on 30 April 2012.

unnecessary tiers of management and enhances the role of the Information Centre for Health and Social Care.⁷⁷⁰

5.3.3 The contribution of civil society organisations in the drafting process

5.3.3.1 The pre-legislative process

The Parliamentary process of the Health and Social Care Act 2012 involved a full law-making process in accordance with the analysis in Chapter 2. At the pre-legislative stage, the government consulted a wide range of individuals and organisations in four months, from July to October 2010, in order to draft its proposal. There were more than 6,000 responses sent to the government. Based on the public consultations, the government modified the draft to focus on strengthening the role of Health and Wellbeing Boards in local authorities and creating a more distinct identity for Healthwatch England,⁷⁷¹ and to highlight patient choice and the use of information technology in order to support people's involvement in decisions about their care.⁷⁷² In addition, the government also launched two consultations in December 2010 on the topics of 'Liberating the NHS: Greater Choice and Control' and 'Liberating the NHS: An Information Revolution' in order to gather more opinions from the public.

Similar to the legislative process of the Medical Examination and Treatment Bill 2009 in Vietnam, one of the crucial steps at the pre-legislative stage of the drafting process of the Health and Social Care Act 2012 was to provide an impact assessment report. The impact assessment was conducted mainly by the Department of Health with the assistance of the

⁷⁷⁰ The Health and Social Care Act 2012, Factsheet A1, updated on 30 April 2012.

⁷⁷¹ Ibid.

⁷⁷² House of Commons, Research paper 11/11, Bill 132 of 2010–11, dated 27 January 2011: 2.

Health Protection Agency (HPA).⁷⁷³ The impact assessment was presented to Parliament in the form of a clear structure which included a description of the current system, the proposal for changes, the cost, the benefits of the enforcement of each change option, the implementation and wider impacts, the evidence base, and the risks and assumptions.⁷⁷⁴ According to the *Guide to Making Legislation* of the Cabinet Office,⁷⁷⁵ an impact assessment report should be written in seven steps. Step one is to identify the problem; step two is to specify desired objectives; step three is to identify viable options which achieve the objectives; step four is to identify the impacts, for example, the economic, social, and environmental impacts; step five is to evaluate the costs and benefits of each option; step six is to consider enforcement and implementation issues; and step seven is to plan for an evaluation of the chosen policy. Following the instructions of the Cabinet Office, the 165 page impact assessment report on the Health and Social Care Bill answered questions about the following matters: What is the problem under consideration of this impact assessment report? Why is government intervention necessary? What are the policy objectives and the intended effects? What policy options have been considered? The impact assessment report also provided an analytical summary of the proposed cost of transferring responsibility for commissioning from PCTs and SHAs to GP consortia and the NHS Commissioning Board and identified some risks. These were the risk of GP consortia not having the capacity to engage with and deliver clinical commissioning, the potential conflicts of interest among GP consortia as providers and commissioners of patient care, the risk of

⁷⁷³ The HPA's role was to provide an integrated approach to protecting UK public health through the provision of support and advice to the NHS, local authorities, emergency services, other arms-length bodies, the Department of Health, and others. The HPA became part of Public Health England in 2013, <<https://www.gov.uk/government/organisations/health-protection-agency>>, accessed 11 June 2015.

⁷⁷⁴ Health and Social Care Bill 2011 – Coordinating Document for the Impact Assessments and Equality Impact Assessments, the Department of Health, 30 December 2010.

⁷⁷⁵ The Cabinet Office, *Guide to Making Legislation*, July 2014: 111.

potential higher transaction costs, the risk of the ability of GP consortia to manage risk, and the risk of the ability of GP consortia to deliver financial savings.

There are two tests in the process of making an impact assessment in the UK which Vietnam should consider. These are: (i) the test of enforcement, implementation, and the wider impact, and (ii) the specific impact test. The test of enforcement, implementation, and wider impact is designed to clarify the geographic coverage of the policy, the proposal implementation date, and the compatibility of a Bill with EU requirements. The test of enforcement, implementation, and wider impact helps to verify the content of a Bill and ensure the Bill's consistency with the entire legislative plan, thereby avoiding conflict with, or the infringement of, current domestic regulations and international commitments.

The second test is the specific impact assessment. This includes four specific impact tests: the equality duties test, the economic impacts test, the environment impacts test, and the sustainable development test. Each test has its concrete guidance for a specific process of the impact assessment such as the Statutory Equality Duties Impact Test guidance, the Greenhouse Gas Assessment Impact Test guidance, the Health and Well-being Impact Test guidance, the Human Rights Impact Test guidance, the Justice Impact Test guidance, the Rural Proofing Impact Test guidance, and the Sustainable Development Impact Test guidance. Among the tests to which a policy or a bill should be subjected, the sustainable development test seems to be the most challenging but is a notable test which not only Vietnam but also other developing countries should adopt. The sustainable development test is challenging because the test cannot be completed by merely conducting a cost and benefit analysis; instead, it must be completed by carefully considering that the current generation should enjoy an improving quality of life without compromising the position of future generations.⁷⁷⁶

⁷⁷⁶ Guidance: Sustainable Development Test,

In order to conduct this test, the government provides a framework within which information about the sustainable development impact can be combined with information from the rest of the impact assessment about the balance of monetised and non-monetised costs and benefits.⁷⁷⁷ Accordingly, a policy or a Bill is scrutinised from three perspectives: the environmental standard, the social impact and the long-term impact assessment for practical purposes, and irreversible wealth transfers between generations. The concrete guidance makes the process of writing the impact assessment report of all Bills consistent. Moreover, the requirement to conduct the aforementioned tests expresses the concerns and commitments of Parliament and the government to protect the environment, save resources, and support the sustainable development of the UK.

The requirement to conduct the tests on enforcement impact, equality duties impact, economic impact, environmental impact, social impact, and sustainable development impact, and the concrete guidance to conduct these tests is a useful lesson for Vietnam. Moreover, conducting impact tests is an opportunity to welcome the participation of the public in the impact assessment process and preparation of a Bill, and to promote the evidence-based method in order to build a policy.⁷⁷⁸ For example, the guide to carrying out a Health Impact Assessment Test on a new policy of the Department of Health requires an assessment to be undertaken as ‘a combination of procedures, methods and tools by which a policy, programme or project may be judged as to its potential effects on the health of a population, and the

<<https://www.gov.uk/guidance/sustainable-development-impact-test>>, accessed 6 April 2016.

⁷⁷⁷ The Guidance regarding the Sustainable Development Impact Test is at <<https://www.gov.uk/guidance/sustainable-development-impact-test>>, accessed 6 April 2016.

⁷⁷⁸ Department of Health, The introduction of the guide to carrying out a Health Impact Assessment of new policy as part of the Impact Assessment process, July 2010.

distribution of those effects within the population'.⁷⁷⁹ Accordingly, it is proposed that the team conducting the assessment consists of the policy lead, supported by economists, analysts, and social researchers. The team should draw in expertise from a range of subject specialists when needed and gather evidence during policy development to add this to the health impact assessment test. Therefore, conducting the impact test is also a channel to allow the participation of the public and CSOs in the pre-legislative process of a Bill.

As shown by the analysis in Section 5.2.3, the process of making an impact assessment report in Vietnam is still comparatively simple. Even the impact assessment report of the Law on Medical Examination and Treatment 2009, which was made with the assistance of foreign CSOs and organisations, mainly focused on the impact of the Bill and the current legal system. Questions about how the Bill may affect the environment, equality duties, health and well-being, and the sustainable development of the country did not receive adequate attention. However, as the analysis in Section 5.2.3.1 shows, the cost of legislation should also be taken into account. At the preparation stage of legislation, a Bill team is required to make a realistic delivery plan and risk register which should be approved by the project board and ministers. The content of the delivery plan is required to establish the person who takes responsibility and the timetable for conducting preliminary work such as ministerial clearance within the department, collective agreement by the relevant Cabinet committee, public consultation and relevant policy documents, the delivery of policy instructions to legal advisers and Parliamentary counsel, the production of explanatory notes, an impact assessment, and first draft of the Bill. The delivery plan should also cover resourcing, the budget, administrative issues, and staffing.⁷⁸⁰

⁷⁷⁹ Department of Health, The introduction of the guide to carrying out a Health Impact Assessment of new policy as part of the Impact Assessment process, July 2010: 4.

⁷⁸⁰ The Cabinet Office, Guide to Making Legislation, July 2014: 32.

In the UK, there is no specific provision to provide a framework for making a budget proposal in the delivery plan which is equivalent to Joint-Circular No. 92/2014/TTLT/BTC-BTP-VPCP of Vietnam. Generally, legislative budget planning is part of the public expenditure of each department. The cost of legislation is a package which includes the cost for the relevant department in terms of developing the processes of consultation and meetings into a proposal for legislation. The main public expenditure statistical analysis report which reflects annual expenditure is the Public Expenditure Statistical Analyses 2014, presented to Parliament by the Chief Secretary to the Treasury.⁷⁸¹ This comprises data from 2009 to 2014 and an expenditure plan for 2015–2016. In the Public Expenditure Statistical Analyses 2014, the expenditure of public services and departmental expenditure is displayed based on twenty-two fundamental functions of the government such as Education, the NHS, Personal Social Health Services, Transport, the Home Office, Justice, Energy and Climate Change, and the Cabinet Office. These classifications are based on the UN's Classification of the Functions of Government rather than the detailed expenditure on legislation.⁷⁸²

The point which should be noticed here is that departmental expenditure comprises around 65% in the form of administration costs, which are accounted for by civil service pay, and a further 30%, which is accounted for by the procurement of goods and services such as accommodation, equipment, and travel.⁷⁸³ Therefore, it is not easy to estimate specifically the expenditure for drafting law. The author sent an FOI request to the Ministry of Health and HM Treasury to ask for the cost of drafting the Health and Social Care Act 2012. However, the responses were only about the cost for NHS modernisation and other transition costs for the transfer of responsibility from

⁷⁸¹ Public Expenditure Statistical Analyses 2014, Presented to Parliament by the Chief Secretary to the Treasury by Command of Her Majesty, Cm8902, dated July 2014.

⁷⁸² *Ibid*, 4.

⁷⁸³ Table 1.7, Public Expenditure Statistical Analyses 2014, Cm8902, dated July 2014.

previous entities such as the PTCs and SHAs to the bodies which were newly established or appointed in the Act such as the Monitor and the Clinical Commissioning Group.⁷⁸⁴ There was no detailed information about the cost for drafting a law, especially the cost for drafting the Health and Social Care Act 2012. The annual expenditure on health care in the UK, including the expenditure for the NHS and Personal Social Service always takes a large proportion of the national budget. For example, in 2009 the expenditure on health care was £101,876 million, double the expenditure on education, fourteen times more than the expenditure on Transport, sixty times more than the expenditure on culture, media, and sport, and forty-two times more than the expenditure of the Cabinet Office. The same rate of expenditure has been maintained until 2015 and is expected for 2016.⁷⁸⁵

5.3.3.2 The legislative process

The legislative process of the Health and Social Care Act 2012 reflected the importance of the NHS in the UK. The legislative process included forty sittings to debate the content of the Bill at the committee stage of the House of Commons and fifteen sittings at the committee stage of the House of Lords. The Bill also required two sittings at the report stage of the House of Commons and seven sittings at the report stage of the House of Lords. When compared with the sitting times at the legislative stage of the Medical Examination and Treatment Bill in Vietnam or other Bills in the UK which were drafted in 2012, the number of sittings of the Health and Social Care Act 2012 was much higher. For instance, the legislative process of the Civil Aviation Act 2012 only included fourteen sittings at the committee stage of the House of Commons and four sittings at the committee stage of the House of Lords.

⁷⁸⁴ FOI request reference DE00000951657, dated 27 August 2015.

⁷⁸⁵ Table 1.4 Public Expenditure Statistical Analyses 2014, Cm8902, dated July 2014.

The number of sittings in the UK for the Health and Social Care Act 2012 is also much more than the counterpart Act in Vietnam. The Health and Social Care Bill was introduced into the House of Commons on 19 January 2011. Because of the complexity and the importance of the Bill, the initial Public Bill Committee became the longest Public Bill Committee for any Bill.⁷⁸⁶ At the Public Bill Committee, the Committee of the House of Commons invited a number of organisations, including the health organisations funded by health authorities and local authorities such as Rethink, the Foundation Trust Network, and organisations which represented a specific group of practitioners such as the Royal College of Physicians, the Royal College of Nursing, the Royal College of Surgeons, and CSOs in the health and social care field. Diverse CSOs presented their witnesses, evidence, and opinions at the committee stage of the House of Commons, including the Health Foundation,⁷⁸⁷ the Centre for Public Scrutiny,⁷⁸⁸ the King's Fund,⁷⁸⁹ the British Medical Association,⁷⁹⁰ MIND,⁷⁹¹ Parkinson's

⁷⁸⁶ The Health and Social Care Act 2012, Factsheet A4, updated on 30 April 2012.

⁷⁸⁷ The Health Foundation is an independent charity working to improve the quality of health care in the UK, <<http://www.health.org.uk/about-us/>>, accessed 13 June 2015.

⁷⁸⁸ The Centre for Public Scrutiny is an independent charity whose principal focus is on scrutiny, accountability, and good governance, both in the public sector and amongst those people and organisations which deliver publicly funded services, <<http://www.cfps.org.uk/about>>, accessed 13 June 2015.

⁷⁸⁹ The King's Fund is an independent charity working to improve health and health care in England. It helps to shape policy and practice through research and analysis; develop individuals, teams, and organisations; and promote understanding of the health and social care system, <<http://www.kingsfund.org.uk/about-us>>, accessed 13 June 2015.

⁷⁹⁰ The British Medical Association is an independent trade union which represents members' interests in developing and maintaining their terms and conditions of employment and which is dedicated to protecting individual members and the collective interests of doctors in the workplace, <<http://bma.org.uk/about-the-bma/what-we-do/bma-as-a-trade-union/the-doctors-trade-union>>, accessed 13 June 2015.

UK,⁷⁹² Target Ovarian Cancer,⁷⁹³ and Rethink.⁷⁹⁴ Because the CSOs brought their experiences and practical views to the meetings of the Public Bill Committee at the Committee stage, the members of the Committee had an opportunity to consider the practical views of the CSOs on several fundamental issues of the Bill. Responding to the questions of the members of the Public Bill Committee, the Health Foundation, the Centre for Public Scrutiny, and the King's Fund took the chance to provide further analysis on certain risks. These included the transitional risks; the NHS finance risks, especially the challenge of spending £20 billion for the reform of the NHS; the greater local autonomy and freedom from burdens which can run the risk of diminished public accountability; and the governance culture of some of the new organisations.⁷⁹⁵ The CSOs also presented their analyses on the prospect of the involvement of the public and patients in making decisions and the working of the service change based on the principle of the Bill that 'no decision about me without me'.⁷⁹⁶ However, some CSOs invited to the

⁷⁹¹ MIND is an independent charity for mental health in England and Wales, <<http://www.mind.org.uk/about-us/what-we-do/>>, accessed 13 June 2015.

⁷⁹² Parkinson's UK is the UK's Parkinson's support and research charity. Parkinson's UK is independent and totally based on donations, <<http://www.parkinsons.org.uk/content/who-we-are#sthash.vNbE2tpr.dpuf>>, accessed 13 June 2015.

⁷⁹³ Target Ovarian Cancer is the national ovarian cancer charity working to save lives and help diagnosed women live their lives to the full, <<http://www.targetovariancancer.org.uk/about-ovarian-cancer>>, accessed on 13 June 2015.

⁷⁹⁴ Rethink is a charity to help people affected by mental illness by challenging attitudes and changing lives. Most of Rethink's work is funded by health authorities and local authorities, <<https://www.rethink.org/about-us>>, accessed 13 June 2015.

⁷⁹⁵ Public Bill Committee for the Health and Social Care Act 2012 on 8 February 2011.

⁷⁹⁶ Section 242 of the National Health Service Act 2006 applies to (a) Strategic Health Authorities, (b) Primary Care Trusts, (c) NHS Trusts, and (d) NHS Foundation Trusts. Each body to which this section applies must make arrangements to secure that persons to whom the services for which it is

Committee meeting did not have a chance to present their opinions directly to the Committee members; for example, MIND, Parkinson's UK, Target Ovarian Cancer, and Rethink. There were no questions raised by these CSOs.

As the analysis in Section 5.3.1 shows, the scheme of drafting the Health and Social Care Bill was changed at the legislative stage. On 4 April 2011, the Prime Minister introduced a pause in the passage of the bill through Parliament in order to listen and respond to the concerns of stakeholders. The NHS Future Forum was thereupon established as an independent charity during this special period to provide the government with more information and advice. In order to provide more input for the Bill team and MPs, the NHS Future Forum, with the collective opinions from thousands of people, reported on proposed changes to the NHS on sixteen main points which were sent to the Prime Minister, Deputy Prime Minister, and the Secretary of State for Health.⁷⁹⁷ The sixteen-point proposal of the NHS Future Forum focused on the core of the NHS and the development model of the NHS. Among the issues raised were concerns about whether the Bill should require commissioning consortia to have a governing body which meets in public with effective independent representation to protect against conflicts of interest; whether the primary duty of the Monitor to 'promote' competition should be removed; and whether the Bill should be amended to require Monitor to support choice, collaboration, and integration.

From the sixteen-point proposal of the NHS Future Forum, Professor Steve Field, as the Chairman of the CSO, also presented his opinion to the

responsible are being or may be provided are, directly or through representatives, involved in and consulted on (a) the planning of the provision of the services, (b) the development and consideration of proposals for changes in the way the services are provided, and (c) decisions to be made by the body affecting the operation of the services.

⁷⁹⁷ NHS Future Forum, Summary report on proposed changes to the NHS, 13 June 2011.

Prime Minister, the Deputy Prime Minister, and the Secretary of State for Health. This opinion included eight points with short and clear suggestions. For example: the place of competition in the NHS should be as a tool for supporting choice, promoting integration, and improving quality; the Monitor's role in relation to 'promoting' competition should be significantly diluted; NHS staff, patients, and the public must be addressed if the reforms are to be progressed; and services must change in order to meet the needs of local populations, especially about the location of some services and hospitals. Finally, Professor Field said that all of the decisions would need to be sensitively handled and clinically led.⁷⁹⁸

The activities of the NHS Future Forum in the legislative process of the Health and Social Care Act 2012 reveal a good example of democratic activities and the productive participation of CSOs for the legislative process in Vietnam. Firstly, the NHS Future Forum adopted a serious and democratic methodology of working which encouraged people to raise their voices and make them heard. The NHS Future Forum arranged the attendance of 6,700 people at listening events, and considered 25,000 emails and 600 responses from people in response to its questionnaire.⁷⁹⁹ Secondly, the NHS Future Forum made a concrete proposal to the relevant people such as the Prime Minister, Deputy Prime Minister, and the Secretary of State for Health on how the Government's modernisation plans for the NHS could be improved.

The chairman of the NHS Future Forum, as the representative of the CSO, also issued clear messages that emphasised some core points in order to draw the attention of the authority: (i) GPs should take responsibility for the health of their local populations and the financial and quality consequences of their clinical decisions through a comprehensive system of commissioning consortia under the multi-professional advice system; (ii) services must

⁷⁹⁸ Professor Steve Field, NHS Future Forum report on proposed changes to the NHS, June 2011.

⁷⁹⁹ NHS Future Forum, Summary report on proposed changes to the NHS, 13 June 2011.

involve clinically led change in order to meet the needs of local populations; (iii) the place of competition in the NHS should be as a tool for supporting choice, promoting integration, and improving quality; (iv) the declaration of ‘no decision about me, without me’ must be hardwired into every part of the system from the legislation through to each and every encounter between a patient and a health care professional; (v) attention should be enhanced on how different parts of the system, GPs, hospitals, and public health should be joined up to provide the integrated care that patients need; (vi) the transparency about how public money is spent and how and why decisions are made and the outcomes being achieved at every level of the system should be clear; and (vii) the education and training of the health care workforce should be the foundation on which the NHS is built and the single most important thing in raising standards of care.⁸⁰⁰

Moreover, in order to make the analysis and proposals clearer, the NHS Future Forum split the data, analysis, and proposals into particular reports in particular fields. The reports included topics such as choice and competition,⁸⁰¹ clinical advice and leadership,⁸⁰² education and training,⁸⁰³ and patient involvement and public accountability.⁸⁰⁴ Each report included data, evidence, and analysis. For instance, in the report x ‘Choice and

⁸⁰⁰ NHS Future Forum, Summary report on proposed changes to the NHS, 13 June 2011.

⁸⁰¹ The report can be seen at

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213751/dh_127543.pdf>.

⁸⁰² The report can be seen at

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213750/dh_127542.pdf>.

⁸⁰³ The report can be seen at

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213751/dh_127543.pdf>.

⁸⁰⁴ The report can be seen at

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213752/dh_127544.pdf>.

Competition – Delivering Real Choice’, the NHS Future Forum made its proposal based on the analysis of the King’s Fund on the new model of care which argued for greater focus on prevention and a progressive shift in resources away from acute hospitals to providing health care closer to people’s homes; the Health Foundation’s comments on the transformation of the health service; the research of the consultancy company McKinsey on the effect of competition on the improvement of the quality of the health care service; and the case study ‘Manual Therapies Back and Neck Service’.⁸⁰⁵

The working methodology of the NHS Future Forum tackled two of the main problems which the CSOs in Vietnam currently encounter: the lack of public involvement in their work and the abstract proposals which sometimes make the Bill team and the members of the National Assembly in Vietnam confused.⁸⁰⁶ Transparency in conduct and concrete proposals and messages to the government and Bill team are the key points which made the activities of the NHS Future Forum successful.

One more important point at the legislative stage in the UK which makes the process more progressive than in Vietnam is that crucial comments from organisations and CSOs directly related to the content of the Bill were fully and specifically mentioned in the report of the House of Commons for MPs’ reference. For example, the opinions of the Social Work Reform Board⁸⁰⁷ and the opinions of the National Care Forum about the risks which would damage the distinctive contribution of social care to support services were recognised in the Research Paper of the House of Commons

⁸⁰⁵ NHS Future Forum, Choice and Competition – Delivering Real Choice, A Report from the NHS Future Forum, June 2011.

⁸⁰⁶ Fieldwork, Interviewee D5.

⁸⁰⁷ The Social Work Reform Board is an organisation which was set up by the government to implement recommendations made by the Social Work Taskforce about building a safe, confident future and reforming social work through a more apparent and effective regulation of social work education.

about the Health and Social Care Act⁸⁰⁸ and were referred to the main part of the Research Paper of the House of Commons.

Besides the opinions which were directly referred to in the main part of the Research Paper of the House of Commons Library, the remaining opinions from the opposition party, CSOs, and academic and other organisations were listed briefly in the appendix as ‘Reactions to the Health and Social Care Bill’ at the second reading stage.⁸⁰⁹ For instance, the Health and Social Care Bill also received opinions from the Labour Party, the British Medical Association, the King’s Fund, the NHS Confederation, the Patients’ Association, the Royal College of General Practitioners, and the Royal College of Nursing. Their points were briefly listed in appendix 2 of the Research Paper. Applying this method of information presentation, the House of Commons Library staff enabled MPs to have an overview of the Bill from different angles.

In addition to the opinions contributed to the House of Commons by the experts and relevant organisations, in the second reading stage of the House of Commons, the public were also invited to submit opinions and evidence related to the Health and Social Care Bill through the Parliament’s website. Concrete guidance on how to submit opinions and evidence,⁸¹⁰ and how to hear oral evidence from the public for the Health and Social Care Act Bill with full details of time, venue, and the subject for each day on Parliament’s website, were all made transparent.⁸¹¹

⁸⁰⁸ House of Commons, Health and Social Care Bill – Bill 132 of 2010–11, Research Paper 11/11, dated 27 January 2011.

⁸⁰⁹ House of Commons, Health and Social Care Bill – Bill 132 of 2010–11, Research paper 11/11, Appendix 2 – Reactions to the Health and Social Care Bill, dated 27 January 2011.

⁸¹⁰ The Health and Social Care Bill, Have Your Say, <<http://www.parliament.uk/business/news/2011/june/recommittal-of-the-health-and-social-care-bill/>>, accessed 19 November 2014.

⁸¹¹ The Health and Social Care Bill Committee,

5.3.3.3 The post-legislative process

At the post-legislative stage of the legislation in the UK, regulations which could be too complex or too detailed to include in an Act are implemented by statutory instruments. Statutory instruments are made in various forms, including orders in Council, regulations, rules, and orders.⁸¹² The form to be adopted is usually set out in the enabling Act.⁸¹³ Statutory instruments can be enacted in different years after the enactment of an Act. For instance, twenty-four statutory instruments, which represent twenty Orders and four Regulations, have been enacted in the post-legislative stage of the Health and Social Care Act 2012 from 2012 to 2015. Regarding the Health and Social Care Act 2012, the power to make statutory instruments is exercisable by the Secretary of State.⁸¹⁴ The participation of CSOs in the creation process of statutory instruments is not compulsory. For example, in the Health and Social Care Act 2012 (Commencement No. 6) Order 2013⁸¹⁵ and the Health and Social Care Act 2012 (Consequential Amendments) (No. 2) Order 2013 which were issued by the Secretary of State for the Department of Health,⁸¹⁶ the Secretary of State did not undertake any public consultation with CSOs or any other state agencies because the content of the statutory instruments is within the absolute power of the Secretary of State for the Department of Health.

<<http://www.parliament.uk/business/news/2011/february/health-and-social-care-bill-committee-announce-programme/>>, accessed 19 November 2014.

⁸¹² Section 1, Statutory instruments Act 1946, UK.

⁸¹³ Statutory Instruments, <<http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/statutory-instruments>>, accessed 17 July 2015.

⁸¹⁴ Section 304(1), Health and Social Care Act 2012.

⁸¹⁵ Statutory Instrument No. 2896 (C. 117), 2013.

⁸¹⁶ Statutory Instrument No. 2341, 2013.

At the post-legislative stage, some organisations were established based on the Health and Social Care Act 2012 and became involved in post-legislative work. Essentially, the Health and Social Care Act 2012 provided for the establishment of Healthwatch England to give advice and provide information to the Secretary of the State, the NHS Commissioning Board, Monitor, English local authorities, and the Care Quality Commission. Healthwatch England takes into account the views of health and social care service users about the quality of the health and social care service. It also provides the public with information about local care services and the choices to be made in respect of these services.⁸¹⁷ Therefore, Healthwatch England connects CSOs closely to the implementation of the Act.

5.4 Conclusion

Health and medical care is one of the most fundamental needs and social human rights of the people in Vietnam, the UK, and all countries worldwide but is also a very complex undertaking. Therefore, the drafting process of health and medical regulations in Vietnam and the UK drew a remarkable amount of attention from the legislators, governments, and many CSOs. The importance of the Medical Examination and Treatment Law 2009 and the Health and Social Care Act 2012 was expressed through the attention spent on discussing the Bills in Vietnam and the UK and the numbers of sittings at the legislative stages, which were higher than any other Bill at the same time. However, although the Law on Medical Examination and Treatment 2009 is about one of the core social rights of people, the participation of CSOs at the pre-legislative, legislative, and post-legislative stages was not substantial in Vietnam. Especially at the legislative process of the Medical Examination and Treatment Bill 2009 in Vietnam, domestic medical CSOs did not receive adequate encouragement and facilitation to participate in the legislation in terms of collecting their opinions and acknowledging their opinions on the Bill. Besides the issue of the shortage of finance for the legislative process, which has been analysed here, the issue of encouraging the participation of CSOs in the legislative process,

⁸¹⁷ The Health and Social Care Act 2012, Factsheet B3, updated on 30 April 2012: 4.

especially at the legislative stage, has been criticised and should be improved.

The participation of CSOs at the legislative stage of the Health and Social Care Act 2012 in the UK provides a strong example for Vietnam to consider. The Health and Social Care Act 2012 was an example of how to encourage the participation of CSOs in the pre-legislative, legislative, and post-legislative processes. When the legislators and members of scrutiny committees invited CSOs at different stages of the legislative process based on the diversity of the organisations, they received diverse views from a wide range of respondents about fundamental and detailed issues of the Bill.

The case studies in Chapter 5 show that CSOs can actually make a remarkable contribution to the legislative process at all stages. A CSO can even be established for the purpose of actively collecting the views of experts and the public for the drafting process of a specific law. The point which distinguished the legislative process of the Medical Examination and Treatment Law in Chapter 5 from the Access to Information Law, and almost Bills and Laws in Vietnam, was the support and participation of foreign CSOs and international organisations in the preparation process of the Law. However, the participation of foreign CSOs amounted to just temporary assistance in a specific case. Thus, domestic CSOs are normally the most important sources of information and opinion which should be developed and relied upon. In addition, the practical lesson in Chapter 4 and Chapter 5 that Vietnam can learn from the UK is the willingness of the Parliament, the government and the Bill team is a crucial factor to encourage the participation of CSOs in the law-making process. Vice versa, the CSOs should enhance their ability in analysing and presenting their opinions in an effective way to the legislators.

The case studies also revealed that the appropriate use of information technology also assists the legislative process and enhances the transparency of Parliamentary work. Parliament can publish all the

documents in the legislative process on its website so that people can access and gain a more comprehensive view of an Act. Such transparency adds a significant benefit to the legislative process in the UK and offer this a valuable lesson for Vietnam. Information technology can be applied at all stages of the legislative process. Using virtual tools effectively at the pre-legislative stage can facilitate the participation of the public and CSOs in the preparation stage of a Bill. Discussions at the pre-legislative stage not only provide diverse views for a Bill team and National Assembly members but also help the public understand a Bill and the way in which the Bill was shaped. At the legislative and post-legislative stages, the appropriate use of information technology in the UK also helps the public to approach an Act easily and become an active part of the implementation activities of the Act. A further analysis of how to enhance the application of information technology is proposed in the conclusion of this thesis.

CHAPTER 6: CONCLUSION

Chapter 6 looks back to the main research questions and purposes of the thesis in order to highlight the main findings of the research on how the participation of CSOs in the legislative process can enhance the quality and quantity of laws in Vietnam. The conclusion also describes the limitations of the research, evaluates the research process, and proposes ways forward to improve the participation of CSOs in the legislative process, thereby improving the legislative process.

6.1 The research aims and findings

One of the significant findings of the thesis is the definition of the CSO. The term 'CSO' has been used widely around the world in various documents, but there is no comprehensive definition. The establishment of a clear concept of CSO with specific features not only creates a basis for the thesis but also contributes to further study in the same field. The proposed definition of CSO in the thesis was also the first attempt to connect the features and functions of CSOs in the two political systems which Vietnam and the UK have adopted. As long as an organisation satisfies six characteristics of a CSO, including independence, public-orientation, the use of non-violent methods to achieve goals, legal personality, and common purpose, it can be recognised as a CSO. The establishment of clear criteria to identify CSOs helps to develop a common foundation for understanding CSOs in the context of the different political and legal systems. This approach also identifies relevant lessons for Vietnam.

The concept of CSOs in the thesis can apply for the purposes of scholarly research and public policy. As a first step, the concept of CSOs can be proposed to be applied at ministerial level for a circular about the establishment and activities of CSOs in Vietnam. The next step of recognising and regulating CSOs after receiving more research and feedback

can be the adoption of the definition and features in a Decree of the government and the Law. The six core features of CSOs in the cross-political institutional environment may be challenged in practice or may require further research before adoption by a specific government. For instance, the feature for a CSO of having a legal personality is still a controversial issue for policymakers and researchers in some jurisdiction.

Overall, the thesis focused on three research questions. First, why the participation of CSOs in the legislative process is important and how it may enhance the quality as well as quantity of laws in Vietnam. Second, what is the role of democracy in the law-making process and why CSO involvement is considered a tool to enhance democracy and legitimacy in developing countries such as Vietnam. Third, how to improve the frameworks and supportive factors for CSOs to enable them to participate in the law-making process in Vietnam with further lessons from the UK. An outline of the answers provided in this thesis will now be given.

With regard to the first research question of the thesis, the research has analysed and explored the necessity of participation of CSOs in the legislative process through legal documents analyses in Section 2.3, Section 3.3, and the case studies in Chapter 4 and Chapter 5,. Accordingly, the role of CSOs is confirmed throughout the whole process, which includes the pre-legislative, legislative, and post-legislative stages. Especially at the pre-legislative stage, CSOs can involve various facilitative activities such as analysis, new evidence provision, lobbying, and petitions which reflect public opinion. The participation of CSOs at the pre-legislative stage can be achieved either by serving as a member of a bill team or as independent entities acting as respondents. In both instances, CSOs can make significant contributions to the legislative process. The participation of the Consumers' Association and the Campaign for Freedom of Information in the pre-legislative stage of the UK Freedom of Information Act 2000 is a good illustration of the benefits which the government and a bill team can have when allowing CSOs to assist with legislation. This also an illustration for the

application of the values of democracy and participation in the law-making process. The NHS Future Forum was even specifically established as a CSO to promote the Health and Social Care legislation and played a crucial role in eventually persuading the government to introduce the Freedom of Information Bill, strengthen it in Parliament and encourage people to contribute their opinions.

The involvement of the CSOs at the pre-legislative stage of a bill not only assists the bill team and the government to improve the bill but also helps to spread information to the public which facilitates the implementation of the law when it is passed. The more involved CSOs become at the pre-legislative stage, the more beneficial it is to the National Assembly and government at the next legislative stage. In addition, as the analysis of the law-making process in Vietnam in Section 3.2.1 and the UK in Section 3.2.2 showed, the pre-legislative stage is the most appropriate period for the government and a bill team to listen, consider, and accept the opinions of the CSOs. This is because most of the work for assessing and shaping a bill at the legislative and post-legislative stages is put into the hands of MPs and parliamentary bodies. The result of the fieldwork with the interviewees from members of the National Assembly and officers of the National Assembly and government offices also confirmed that the opinions of CSOs are welcomed most at the pre-legislative stage by those officers who are most receptive to shaping a bill. However, the participation of CSOs at the legislative and post-legislative stage is also important in order to continue providing legislators and the public with further information so that MPs and the National Assembly can make the best possible decisions at the final vote on whether to pass a law. Further, the participation of CSOs at the post-legislative stage can assist Parliament and the government to scrutinise the actual effect and application of the law in practice and enable them to make proposals on further guidance in the implementing documents which are important in Vietnam.

With regard to the second question of the thesis, about the role of democracy in the law-making process and why CSO involvement is considered important in order to enhance democracy and legitimacy in developing countries such as Vietnam, the research analysed the necessity of democracy in the legislative process and the role of the value of democracy in relation to three other values of legislation: efficiency and effectiveness, fairness, and participation. Democracy is an essential value. Its value for legislation in modern society is to contribute to the assurance that the public voice will be taken into account in law-making. Among several models of democracy worldwide, the thesis selected social democracy as the main model to adopt. The reason is that social democracy is close to the condition and culture of Vietnam. The positive prospects for the application of democracy in Vietnam have been shown through the Vietnamese Constitution 2013 and the regulation of democracy at grassroots level by Directive No. 30-CT/TW of the Politburo and a Decree of the government.

As part of the answer to the second research question, the research analysed the role and the activities of lobbyists in the legislative process in the UK. Lobbying is a sign of the value of democracy in the law-making process. However, lobbying and lobbyists have not yet been recognised in any laws in Vietnam. Therefore, analysing the experience of the UK in regulating lobbying and lobbyist activities has provided relevant lessons for Vietnam about the way to deliver the value of democracy in legislation. In the pre-legislative process in the UK, lobbying has a vital role. Many lobbyists, especially CSOs, act as helpful providers of information and facilitators of parliamentary debate in order to improve the quality of the law, especially with regard to very technical and complex aspects. Furthermore, democracy now has available technical tools to create the new sphere of 'e-democracy'. As the analysis of Chapter 3 shows, e-petitions and e-democracy reflect the effort of the government and Parliament to improve the transparency and accountability of government and politics and to expand democracy. E-democracy enables individuals, organisations, and civil society to express their views and seek as broad a consensus as possible on policy and law in its final form. In addition to an analysis of lobbying and lobbyists, the idea and

practice of e-democracy would be helpful for Vietnam in order to make its legislation more democratic, transparent, and flexible, and to invite greater participation of CSOs in the legislative process.

Democracy provides an ideological platform which can positively contribute to the improvement of the position of CSOs and make the relationship between the government and CSOs more balanced in the legislative processes. In Vietnam at present, because the CSO system comprises different types of organisation, their position and their relationship with the government also vary. As the analysis about the CSO system in Chapter 1 shows, CSOs in Vietnam consist of some organisations which were established at the time when the country achieved its independent status in 1945 (e.g. the Trade Union and the Lawyers' Association) and some recently established organisations (e.g. the Association of Young Entrepreneurs and the Real Estate Traders' Association). The differences in establishment history, activities, and financial strength complicate the ability of CSOs to approach information and widen the chance to be heard in the legislative process. Promoting the value of democracy enhances the chance for all CSOs to make their voices heard and establishes a more balanced relationship between the government and all CSOs in which the government should pay more attention to the opinions of a wider range of CSOs rather than focus on some well-known CSOs based on their long history of establishment, important area of work and the number of their members as the analysis in the section 3.3.1.2. The openness and willingness to listen from the government and the National Assembly are vital to encourage the participation of CSOs and promote the democracy in the law-making process.

The third question of the thesis, about the improvement of frameworks and supportive factors for CSOs to enable them to participate in the law-making process in Vietnam with lessons from the UK, is presented in Section 6.3.

6.2 The research process

Because the Law of Association is still on the table of the Vietnamese National Assembly and the availability of online resources in Vietnam is limited, the researcher encountered significant challenges in the research process, such as the shortage of literature and unpublished documents. An important source of literature for the research in Vietnam was the books and documents which were collected directly from the library of the Ho Chi Minh City University of Law, the National Assembly office, government departments, and some CSOs during the fieldwork. Because some documents were collected directly, there was also the problem of keeping them updated. However, in order to keep the research updated and original, the legal documents used for the thesis have been updated to the end of June 2016.

The fieldwork in Vietnam was completed at the end of year two of the study when the researcher arranged interviews with all of the anticipated interviewees. The fieldwork successfully invited participants from diverse areas, including officers of the government and the National Assembly office, representatives of CSOs, and members of the National Assembly. Their opinions provided a wide range of views and were a vital and original source of information for the research. The fieldwork in the UK met other difficulties because the researcher is an international student. Compared to the situation in Vietnam, the researcher had less knowledge about how to identify and contact interviewees. In addition, the greater hesitation of MPs, officers of Parliament and the Cabinet Office, and CSOs in the UK about participating in the research also challenged the fieldwork. Another factor which affected the fieldwork was that the 2015 election in the UK took place in the middle of the research period and close to the time of conducting the fieldwork. Therefore, inviting MPs to participate in fieldwork in the busiest year of Parliament, especially some months before and after an election, resulted in refusals 'due to the amount of work'. The research could have been more successful if the fieldwork had taken place in a more appropriate segment of the working time of Parliament. Although the fieldwork in the UK could not involve MPs, the

opinions of interviewees who are parliamentary officers and experts with experience in legislative drafting work provided the researcher with many important ideas. The researcher also received the comments of representatives of CSOs in the UK about the law-making process and their participation.

The diverse research methods in this thesis such as qualitative research, policy transfer, library-based research, and different methods of approaching the interviewees were applied in order to analyse the questions of the thesis and to tackle the shortage of research literature. The thesis used fieldwork and case studies as additional sources. The fieldwork and case studies have shown that the active participation of CSOs in the legislative process by providing evidence and practical experience can assist the members of the National Assembly in making their decisions. The process of analysing the literature, the case studies, and fieldwork in the UK about the participation of CSOs in the legislative process in connection with the situation in Vietnam has provided many implications and lessons for Vietnam on how to encourage CSOs to contribute greater effort to enhance the quality and quantity of laws.

6.3 The way forward and proposals to enhance the participation of CSOs in the legislative process

Through the analysis of the role and participation of CSOs in the legislative process, the research has identified many issues which should be taken into account in order to promote the involvement of the public and CSOs in the legislative process.

First, transparency in the legislative process should be enhanced. Transparency is associated with the value of democracy in legislation and facilitates the ability of the public and CSOs to approach and contribute their views to each bill. The case study in Chapter 5 about the Medical and

Treatment Law 2009 showed that if CSOs are provided with, or able to access, information, they can make significant contributions to the process of shaping bills. For instance, they can participate in the development process of impact assessment reports and organise workshops to provide more evidence, opinions, and expert experience to bill teams and the National Assembly. Transparency and the availability of information in the law-making process was also a concern which the representatives of CSOs in Vietnam raised in the fieldwork. In order to provide comments, analyses, relevant evidence, and data at each stage, CSOs need to have an opportunity to approach full and up-to-date information. This includes the bills, the explanatory reports of the bill teams, the verification reports of the government, the assessment reports of the Ministry of Justice, and other relevant reports of the Secretariat board of the meeting sessions of the National Assembly. The information, and even the versions, of bills published on the public consultation pages of the websites of the National Assembly, the government, and the ministries in Vietnam are sometimes not up-to-date. This problem challenges the usefulness of the participation of CSOs in the law-making process.

Second, and connected with the first proposal, in order to make information open and available, and to encourage the participation of CSOs, shortcomings in using information technology need to be addressed. The analyses from Chapter 2 to Chapter 5 affirm that the significant contribution which information technology can make to enhance the quality of legislation is undoubted. Thus, the use of information technology to support the activities of the legislator and facilitate the participation of CSOs in the legislative process should attract more attention and investment from the government and the public. Applying information technology to the legislative process is not only a matter of technique but also reflects the determination of the government to facilitate the participation of the public in state and parliamentary work. The well-used information technology which is part of the legislative process in the UK, analysed in Chapters 3, 4, and 5, provides a useful lesson for Vietnam. Accordingly, virtual tools allow the public and CSOs to have their voices heard in different ways and at different stages of

the legislative process. Virtual tools also enable an authority to record and recognise the public voice in official documents of the legislative process. An active response from the government, a bill team, or the National Assembly to public opinion is an affirmation which all of the CSOs in the fieldwork expect to receive. This recognition can be in the form of valuable feedback and acknowledgement by those who receive the views and opinions that these have been read.

The recognition of public opinion by an authority can motivate CSOs to contribute their ideas. However, recognition from legislators is not the only factor which can promote the position of CSOs with regard to legislation and encourage the participation of CSOs in the law-making process. An open environment within the political culture is a factor which can interact with such recognition and make CSOs feel that their contributions are more welcome. The political culture in Vietnam is still currently not open because of several reasons. These include the effect of education based on Confucian theory which always demands respect for other people, especially older people. Moreover, the number of part-time members of the National Assembly is still high, as the analysis in Section 1.3 shows. The part-time members of the National Assembly are local civil servants. The social and professional relations in their work sometimes affect the independent activities and opinions in the National Assembly. When the number of full-time members of the National Assembly increases, a more open and professional working environment will follow.

Two obstacles to applying information technology tools to legislative work in Vietnam which were identified in the fieldwork were the shortage of financial support and education. The UK is an appropriate choice for providing an example to Vietnam about the ways in which the two obstacles can be overcome. In 1994, the UK Parliament had no data network, no live feed to members, no parliamentary funding for the purchase of IT devices, and no technical or training support offered by parliamentary staff. Until 1996, the UK Parliament website was confined to publishing documents of the

Houses. In 1998, just two years after the full establishment of Parliament's website, almost all government departments, political parties, and a significant range of interest groups in the UK had established their websites. Moreover, the courts and many government bodies established computerised internal communication systems in order to utilise the efficiency of email, databases, and other software packages.

The relative similarities in the development history of information technology education and the application of the internet to state and parliamentary works between Vietnam and the UK show that the successful experience of applying technology in the UK can be an appropriate lesson for Vietnam. The strong determination of the UK to establish Parliament's website has made an illustration for the Vietnamese National Assembly and government, and encourage them to push forward the application of information technology to legislation. However, websites and other technological tools can only become effective and contribute to democracy and legislation when an authority has the determination to use them to promote democracy and the participation of the public in the law-making process and other state affairs. If the introduction and use of technology by parliamentary and government bodies merely replicates 'unreal images, jargon and movements which look and sound wonderful on screen but actually do little to improve the actual lives of citizens', the trust of the people can be damaged because of what appears to be no more than 'hype politics'.

Third, CSOs in Vietnam need to enhance their capacities to undertake more high-quality research and to undertake more active participation in the legislative process. One of the reasons which still makes the role of CSOs in the legislation in Vietnam limited is the relatively low quality of CSOs' opinions or proposals which are sent to parliament and government. There are several reasons for the ineffectiveness of participation of CSOs in the legislation and why the quality of proposals is still low, as reflected in Chapter 3 and the fieldwork. These are the shortage of finance to support research, the shortage of time to develop comprehensive suggestions or proposals to

bill teams when the time for bill consultation is short, and the lack of incentive to participate in the consultation process when their voices are not officially recognised in any documents of the National Assembly. Among these reasons and problems, the issue of 'low trust' between CSOs and the government regarding legislation needs to be tackled as soon as possible.

According to the fieldwork in Vietnam, in order to encourage CSOs to become more active participants in the formation of bills and to contribute their opinions to bill teams, the 'trust' between legislators and CSOs should be established by creating a method or a virtual tool to acknowledge CSOs' opinions. Currently, almost all of the opinions of CSOs and public comments regarding bills on the websites of the National Assembly, the government, and the Ministry of Justice receive a 'silent response'. The National Assembly and government officers in the fieldwork explained that bill teams and government officers are not able to provide detailed answers to every opinion because the volume of opinions is high; thus, they just give a 'silent response' to the comments which they read. Some interviewees of the fieldwork who work in the government and National Assembly office also agreed that the 'silent response' to most of the public opinions via the websites of the government and the ministries can produce a negative effect for CSOs and decrease the incentive of CSOs and the public to contribute opinions. However, according to the full results of the fieldwork, the different perspectives of the government and CSOs have led to a misconception about 'acknowledgement' and the method to acknowledge the opinions of CSOs in the law-drafting process.

From the stance of state officers, responding to all opinions of CSOs via a website can overload the work of the government and parliamentary officers because each response should include an analysis of why an opinion is or is not accepted. This approach would create a significant amount of work. However, from the stance of CSOs, an acknowledgement or response can be simply a 'tick' on the website under the opinion or any equivalent evidence to show that the opinions or evidence have been read. The case

studies of the Freedom of Information Act 2008 and the Health and Social Care Act 2012 of the UK in Chapters 4 and 5 have demonstrated a solution for Vietnam. By including the names of contributing CSOs in the appendix of the reports of the House of Commons and House of Lords, and inviting the CSOs to participate and present their opinions in the Select Committee stages of the Houses, sufficient acknowledgement can be made.

In order to promote further the 'trust' between the government and CSOs to a higher and sustainable level, a more comprehensive method should be applied. For instance, setting goals for the government and CSOs, ensuring that the goals have 'goal commitment' with sufficient resources from the government which are needed for CSOs to attain the goals, and providing responses and feedback for the goals. Accordingly, the government and CSOs should set common goals for the participation of CSOs in the legislative process. The 'common goals' established in this research are to facilitate the involvement of the CSOs in the legislation and take advantage of the participation of the CSOs in the legislative process in order to enhance the quality and quantity of law. The next two important factors include the commitment of the government and the 'resources' which the government needs to provide CSOs so that they attain the goals. In this circumstance, the 'resources' are the information and channels which enable CSOs to produce more scholarly reports and contribute their reports and opinions to the process of framing a bill. The government also needs to commit to keep the goals, and should express this commitment to society and CSOs. In addition, in order to maintain a healthy relation between the government and CSOs, and enhance the 'trust' between the government and CSOs, both sides should respond and provide feedback to each other regularly.

The case studies in Chapter 5 also suggest ideas to provide further recognition of CSOs' opinions in Vietnam. In the summary reports of bill teams, the verification reports of committees of the National Assembly, and the assessment reports of the Ministry of Justice, the opinions of CSOs can be divided into two groups. The first group includes the opinions which a bill

team regards as comprehensive and/or significant for a bill, and is presented in the content of the report with the CSOs' names. The rest are presented in full or in summary with the names of the CSOs in the appendix of the reports so that the members of the National Assembly can read and make their further considerations. The method of separating the opinions of CSOs into two groups can help to avoid diluting the report when adding all public and CSO comments into it. This method can also avoid the current situation whereby a bill team systematises all public opinions into a group and uses the form that 'there is an opinion that ...'. This can confuse readers about the author of the opinion and the number of persons and organisations which agree with the opinion.

Finally, the capacity of CSOs and the cooperative attitude of the government and CSOs towards each other in the process of law-making also need to improve. A more welcoming attitude of the government and the National Assembly to the participation of CSOs in legislative work should be shown in order to encourage CSOs to make their best effort to contribute to legislation. This matter relates to the perspective of the government to democracy and how open the government and the National Assembly should be. Many CSOs in Vietnam feel that they are more involved when they are invited or the government and National Assembly provide them with enough information and sufficient time to prepare their reports. However, CSOs should also become more active in participating in the law and policymaking. All of the officers of the National Assembly and government offices who participated in the fieldwork in Vietnam expressed their view that CSOs should be more active in contributing their opinions. The practice in the UK has shown that the active attitude of CSOs to become involved in legislation is vital. Accordingly, CSOs can actively collect and systematise information, including requests from the public and members of the organisations, in order to contribute to the relevant bill of the National Assembly. CSOs can also actively demand to draft new legal documents. In order to increase their standing, CSOs must ensure that the proposals and other documents which they send to the government and the National Assembly should be written in a scholarly style with supportive evidence. Further, each issue which CSOs

raise should obtain a consensus from the members of the CSOs in order to have a stronger effect on the legislators.

Most fundamental and most difficult, the political culture is a factor that should be changed. The political culture that encourages people and CSOs to criticise and contribute their opinions to political, legal and social issues need to be encouraged. Albeit changing the political culture will challenge certain aspects of political and legislative activities and relate to different subjects such as the National Assembly, the government and the state agencies, it can be achieved when Vietnam has a strong determination and sufficient lessons from other developing countries. In 2013, the Vietnam Constitution was changed and it supports the openness in politics and legislation. The Constitution 2013 continues to recognise the right of people to practice their state power under the forms of direct democracy and indirect democracy through the National Assembly, the People's Councils and other state agencies in Article 6. Especially, Article 9 of the Constitution, as the first time, emphasised the function of Vietnam Fatherland Front to practice social supervision and critic and participate in the construction of the country. The change in politics and legislative culture must be one of the fundamental change. Otherwise, the values of legislation and the participation of CSOs in the law-making process cannot be maximised or achieved.

APPENDICES

INTERVIEW SCHEDULE

Interview with The National Assembly members of Vietnam

Part A.1: Introduction and Professional Profile

Interviewer introduces the background information about the research to interviewees and taking basic background information of the interviewees.

Questions:

A.1.1 Are you a full-time or part-time member of National Assembly (N.A)?

A.1.1.1 If you are a part-time member, what is your main occupation?

A.1.2 How long have you been in this position?

A.1.3 Could you describe briefly your main working area (e.g, the relevant N.A committee) and your areas of initial when you participate in the activities of N.A?

Part A.2: Interviewer invites interviewees to express their general views and evaluation on the quality and quantity of laws in Vietnam and give factual information about the participation of CSOs and other social, professional associations in general into the law-making process in Vietnam.

Questions:

A.2.1 What do you think about the quality of laws that are being enacted annually?

A.2.2 What do you think about the quantity of laws that are being enacted annually?

A.2.3 What are your comments about the participation of lay people and CSOs in the law-making process?

A.2.6 How often do lay people and CSOs contact you as their representative to contribute their opinions to a Bill during the legislative process?

A.2.7 Focusing on the CSOs, what are your comments about the participation of CSOs in the law-making process, regarding:

A.2.7.1 What stage is appropriate for CSO to participate in the law-making process?

A.2.7.2 What kind of issues that CSO pay attention to and participate in the law-making process?

A.2.7.3 Do you facilitate the participation of CSO in the law-making process?

A.2.7.4 Do CSOs take the initiative to participate in the law making process or they are invited?

A.2.7.6 What is the actual impact of CSOs on legislation?

A.2.8 Could you evaluate the influence on the legislative process of these subjects: the National Assembly, the Government, CSOs and the general public. In what order of importance would you put them?

A.2.9 Could you give either a successful or failed example of the participation of CSOs in the law –making process?

Part A.3 Interviewees are asked to suggest recommendations to desire a better framework and encourage the participation of CSOs in the law-making process in order to improve the quality and quantity of laws and normative acts in Vietnam.

Questions:

A.3.1 Are there any improvements that the current process of the Parliament and Government to receive the public opinions should be adopted to encourage the participation of CSOs in the law-making process?

A.3.2 Are there any actions that CSOs themselves should be taken to improve their input to the law-making process?

Part A.4: Interviewees will have a chance to add their additional comments

A.4.1 Do you have any other comments or suggestions relating to the participation of CSOs in the law making process in Vietnam?

B. Interview with Civil Social Organisations in Vietnam and the UK

Part B.1: Introduction and Professional Profile

Interviewer introduces the background information about the research to interviewees and taking basic background information of the interviewees.

Questions:

B.1.1 What is your position?

B.1.2 How long have you been in your current position in this CSO?

Part B.2: Interviewer invites interviewees to express their general views and evaluation on the quality and quantity of laws and give factual information about the participation of CSOs and other social, professional associations in general into the law-making process

Questions:

B.2.1 What are your comments about the quality of Laws and other Normative Acts which are currently regulating the CSOs?

B.2.2 What are your comments about the quantity of Laws and other Normative Acts which are currently regulating the CSOs?

B.2.3 Do you think the participation of CSOs in the law-making process is important or unimportant to the policy of fairness of participation and the improvement of quality and quantity of the law?

B.2.4 Has your organisation ever participated in the law-making process of any laws/or Normative Acts?

B.2.4.1 If yes, could you describe the involvement of your organization and how often?

B.2.4.2 Could you give example of success or failure or both

B.2.5 By what means, if any, does the current legal system encourage the CSOs to participate in the law-making process

B.2.6 Do you feel you are made welcome to represent your organization to participate in the law-making process?

B.2.7 What are the usual steps that the authority and/or members of MPs follow when receiving your proposal?

B.2.7.1 Are CSOs invited to discuss further?

B.2.7.2 How often do you receive feedback or comments?

B.2.8 In what stages of the law-making process does participation by CSO make the most contribution?

Part B.3 Interviewees are asked to suggest recommendations to frame a framework and encourage the participation of CSOs in the law-making process in order to improve the quality and quantity of laws.

Questions:

B.3.1 Are there any improvements in the quality of Laws that should be adopted to encourage the participation of CSOs in the law-making process?

B.3.2 Are there any improvements in the quantity of Laws that should be adopted to encourage the participation of CSOs in the law-making process?

B.3.4 Are there any actions that CSOs themselves should be taken to improve their position and put those improvements into practice?

Part B.4: Interviewees will have a chance to add their additional comments Question:

B.4.1 Do you have any other comments or relating to the participation of CSOs in the law making process in Vietnam?

C. Interview with The Representatives of Parliamentary officers in Vietnam and the UK

Part C.1: Introduction and Professional Profile

Interviewer introduces the background information about the research to interviewees and taking basic background information of the interviewees.

Questions:

C.1.1 What is your work within the law-making process?

C.1.2 How long have you been in your current position?

C.1.3 How much of your work involves CSOs?

Part C.2: Interviewer invites interviewees to express their general views and evaluation on the quality and quantity of laws and give factual information about the participation of CSOs and other social, professional associations in general into the law-making.

Questions:

C.2.1 Do you think the participation of CSOs in the law-making process is helpful or unhelpful towards the improvement of quality and quantity of the law-making process?

C.2.2 How often do you receive any law-drafting proposals or any other documents in the law drafting process from CSOs either directly or through members of N.A, members of Government?

C.2.3 What is the process followed when the opinions or proposals of CSOs are sent to the National Assembly Office?

C.2.4 By what means, if any, does the current legal system encourage the CSOs to participate in the law-making process

C.2.5 Do you feel you are made welcome to represent your organization to participate in the law-making process?

Part C.3 Interviewees are asked to suggest recommendations to frame a framework and encourage the participation of CSOs in the law-making process in order to improve the quality and quantity of laws.

Questions:

C.3.1 Are there any amendments and/or improvements in term of quality of the current Laws that should be adopted to encourage the participation of CSOs in the law-making process?

C.3.2 Are there any amendments and/or improvements in term of quantity of the current Laws that should be adopted to encourage the participation of CSOs in the law-making process?

C.3.3 Are there any improvements that the current process of the Parliament and Government to receive the public opinions should be adopted to encourage the participation of CSOs in the law-making process?

C.3.4 Are there any actions that might be taken to improve CSO participation and to put those improvements into practice?

Part C.4: Interviewees will have a chance to add their additional comments Question:

C.4.1 Do you have any other comments or relating to the participation of CSOs in the law making process in Vietnam?

D. Interview with Representatives of Governmental officers in Vietnam

Part D.1: Introduction and Professional Profile

Interviewer introduces the background information about the research to interviewees and taking basic background information of the interviewees.

Questions:

D.1.1 What is your work within the law-making process?

D.1.2 How long have you been in your current position?

D.1.3 How much of your work involves with CSOs?

Part D.2: Interviewer invites interviewees to express their general views and evaluation on the quality and quantity of laws in Vietnam and give factual information about the participation of CSOs and other social, professional associations in general into the law-making process in Vietnam.

Questions:

D.2.1 Do you think the participation of CSOs in the law-making process is helpful or unhelpful towards the improvement of quality and quantity of the law

D.2.2 By what means, if any, does the current legal system of Vietnam encourage the CSOs to participate in the law-making process

D.2.3 How often do you receive any law-drafting proposals or any other documents in the law drafting process from CSOs either directly or through members of N.A, members of Government?

D.2.4 What is the process followed when the opinions or proposals of CSOs are sent to the Government Office?

D.2.5 Do you feel you are made welcome to represent your organization to participate in the law-making process?

Part D.3 Interviewees are asked to suggest recommendations to frame a framework and encourage the participation of CSOs in the law-making process in order to improve the quality and quantity of laws and normative acts in Vietnam.

Questions:

D.3.1 Are there any amendments and/or improvements in term of quality of the current Laws that should be adopted to encourage the participation of CSOs in the law-making process?

D.3.2 Are there any amendments and/or improvements in term of quantity of the current Laws that should be adopted to encourage the participation of CSOs in the law-making process?

D.3.3 Are there any improvements that the current process of the Parliament and Government to receive the public opinions should be adopted to encourage the participation of CSOs in the law-making process?

D.3.4 Are there any actions that might be taken to improve their position and put those improvements into practice?

Part D.4: Interviewees will have a chance to add their additional comments

Question:

D.4.1 Do you have any other comments or suggestions relating to the participation of CSOs in the law making process in Vietnam?

E. Interview with Legislative Experts in the UK

Part E.1: Introduction and Professional Profile

Interviewer introduces the background information about the research to interviewees and taking basic background information of the interviewees.

Questions:

E.1.1 What is your work within the law-making process?

E.1.2 How long have you been in your current position?

E.1.3 How much of your work involves with CSOs?

Part E.2: Interviewer invites interviewees to express their general views and evaluation on the quality and quantity of laws in the UK and give factual information about the participation of CSOs and other social, professional associations in general into the law-making process in the UK.

Questions:

E.2.1 Do you think the participation of CSOs in the law-making process is helpful or unhelpful towards the improvement of quality and quantity of the law?

E.2.2 What is the process followed when the opinions or proposals of CSOs are sent to the Cabinet office or Parliament Office?

E.2.3 By what means, if any, does the current legal system of the UK encourage the CSOs to participate in the law-making process

Part E.3 Interviewees are asked to suggest recommendations to frame a framework and encourage the participation of CSOs in the law-making process in order to improve the quality and quantity of laws and normative acts in the United Kingdom

Questions:

E.3.1 Are there any improvements in the quality of Laws that should be adopted to encourage the participation of CSOs in the law-making process?

E.3.2 Are there any improvements in the quantity of Laws that should be adopted to encourage the participation of CSOs in the law-making process?

E.3.3 Are there any improvements that the current process of the Parliament and Government to receive the public opinions should be adopted to encourage the participation of CSOs in the law-making process?

E.3.4 Are there any actions that might be taken to improve their position and put those improvements into practice?

Part E.4: Interviewees will have a chance to add their additional comments

Question:

E.4.1 Do you have any other comments or suggestions relating to the participation of CSOs in the law making process in the UK?

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The local delegation of members of the National Assembly in Hanoi: <http://www.dbndhanoi.gov.vn>

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