

THE ROLE OF CIVIL SOCIETY IN DEVELOPING A SOCIALIST-ORIENTED MARKET ECONOMY

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Abstract: The article presents and analyses: i) the political recognition on the role of civil society organisations; ii) the current state of institutionalization, policies and regulations on the role of civil society organisations in Vietnam; iii) theoretical and practical issues related to the role of civil society organisations under the new context; and iv) directions and guidelines on improving the role of civil society organisations in the development of a socialist-oriented market economy.

Key words: Civil society, socialist-oriented market economy, organisation, the right to association.

Civil society is regarded as a component of the social structure. It is a system in which relationships and associations between individuals are established in order to achieve a specific goal. That way, it emphasizes relationships that connect individuals rather than pulls together individuals within an organization, and the relationships at stake are social relations. If there is yet a social relationship between a collective of individuals, then each of them cannot be considered as member of an organization. Such relationship will bring individuals into a group so that they can execute a certain activity together to address a specific interest, but not political or economic interests. Therefore, in this article, the term “social organization” can be understood as the concept of civil society organisation which has been used extensively in recent periods as the subject of legal reforms on associations, *but not including socio-political organizations.*

1. Political recognition on the role of civil society organisations

Nowadays, not only individual countries

but across the world, the role of civil society as well as of social organisations has been confirmed and significantly developed. Throughout various development stages of democratic and transparent societies, many civil society organisations have been considered as a full partner in bilateral and multilateral fora in multi-dimensional international relations. Speaking at the World Summit on the Information Society held in Tunisia from 16 to 18th October 2005, Secretary General of the United Nations, Kofi Annan affirmed that:

“The UN used to establish formal relationships with governments only. But nowadays, we are aware that peace and prosperity cannot be achieved without the support of partners, including governments, international organisations, business communities and civil society. In the world today, we believe in the role of each and every partner”⁽¹⁾.

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(1) Kofi Annan – General Secretary of United Nations (2005), *Speech at the World Summit on the Information Society* organised in Tunisia from 16-18 October 2005. <http://www.un.org/issues/civilsociety/>

It was not only until today that the importance of civil society and of social organisations was acknowledged. Karl Marx had generalised the role of civil society as: “the real centre, the real arena of the entire history”⁽²⁾. The meaning of this statement is that, any social class, any social force and political party, if it wants victory then it has to succeed in civil society. Therefore, a state of the people, by the people and for the people, no doubt, has to use civil society and its social organisations as the anchor, a partner and a place to validate its policies and regulations.

In every country, the social structure consists of mainly 3 elements: the State, the market and society (civil society). Under the development point of view, the rule-of-law State, the market economy and civil society are the three pillars for development. Addressing the relationship between the state, the market and civil society is critical to the development of each nation.

For the market, civil society is a pool of non-profit relationships for business and production agents to safeguard their interests in industries, to share information... through alliances, groups, associations (civil society organisations – CSOs). When joining the market, individuals and businesses have the need to form alliances, groups, associations to pursue common interests relating to products, markets, prices... Besides business and production groups and associations, civil society is also known as consumer and environmental organisations – those concerned with the market impact of prices and

product quality on consumers, as well as the environmental impact of production and business activities. A powerful civil society will be a good prerequisite to ensure environmentally and socially friendly, equitable businesses. On the contrary, a weak civil society will give way to pure profitability. Therefore, in the “development triangle”, the importance of civil society in promoting, facilitating or hindering economic development is quite obvious, though more or less neglected by many countries.

Vietnam’s Communist Party (CPV) and State have always recognised the role of social organisations in the country’s development process thanks to a thorough understanding of Marxism-Leninism and Ho Chi Minh’s Thought on the role of the revolutionary mass. Via the official documents of the Party Congress, some main observations can be drawn:

- In recent years, under the context and the need to undertake reforms, industrialisation and modernisation, public mobilisation (first of all via social organisations) has been highly regarded. It has remained a strategic task of the Party, constantly being renewed and developed.

- The Party’s principles on public mobilisation have been disseminated fully, thoroughly and comprehensively under its leadership. They form a solid theoretical foundation for actions performed by the entire political system, from central to provincial level.

⁽²⁾ Karl Marx – Friedrich Engels (1980), *Completed Works*, Vol. 1, The Truth Publishing House, Hanoi, p.299.

- The principle of public organisation is a part of the Party's principle on public mobilisation. It lies in the Party's public mobilisation policy.

- Organisations have to be developed in line with the great national unity guideline, promoting the people's creativity and self-motivation; affirming that revolution is a task of the people, by the people and for the people.

Based on such evidence, it can be said that CPV and the State have full awareness of the importance of public organisations during the country's revolution in the past as well as in the current industrialisation and modernisation process. CPV and the State have always valued public mobilisation works and introduced effective solutions to help public organisations to establish and operate efficiently, so as to foster the development and prosperity of the country as set out in the Resolution of the 9th Party Congress: "Expand and diversify forms of public gatherings through people's organisations, social organisations, professional associations, cultural and friendship associations, charities... Enact the Law on Associations in the near future"⁽³⁾. The Resolution of the 10th Party Congress continued to echo the need to "Expand and diversify forms of public gatherings through people's organisations, social organisations, professional, cultural, friendship and charity associations...".

However, recognition on the role of social organisations, illustrated in Vietnam's development policy and guidelines, is not complete:

- Civil society is yet to be regarded as a

component of the modern social structure;

- In the "development triangle", the interaction between the economy and civil society institutions has remained unclear. There are not yet policies that utilize these institutions as instruments or agents in the economic development process.

2. The current state of institutionalisation, policies and regulations concerning the role of CSOs in Vietnam

Vietnam has enforced many legal documents amending issues concerning the role of CSOs in general, namely:

- Interministerial Circular No.195-LB on 13th November 1992 of the Ministry of Science, Technology and Environment and the Government's Board of Personnel and Organisation, providing guidance for registration of scientific research and technology development organisations;

- Decree No.08/1998/ND-CP on 22nd January 1998 of the Government promulgating the regulation on the establishment of associations of foreign businesses in Vietnam;

- Decree No.86/2002/ND-CP on 5th November 2002 of the Government prescribing the functions, tasks, powers and organisational structures of Ministries and Ministerial-level agencies;

- Decision No.21/2003/QĐ-TTg on 29th January 2003 of the Prime Minister stipulating the state budget support rendered to political - social - professional organisations for activities associated with the State's tasks;

⁽³⁾ Vietnam Communist Party (2001), *Official Documents of the 9th Party Congress*, National Political Publishing House, Hanoi, pp.130-131.

- Circular No.123/2003/TT-BTC on 16th December 2003 of the Ministry of Finance providing guidance on the State budget support rendered to political-social-professional organisations for activities associated with the State's tasks;

- Decree No.88/2003/ND-CP on 30th July 2003 of the Government providing for the organisation, operation and management of associations;

- Circular No.01/2004/TT-BNV on 15th January 2004 of the Ministry of Internal Affairs providing detailed guidance on some articles of Decree No.88/2003/ND-CP on 30th July 2003 of the Government providing for the organisation, operation and management of association;

- Decision No.247/2006/QD-TTg on 30th October 2006 of the Prime Minister on amending and supplementing some articles in Decision No.21/2003/QD-TTg on 29th January 2003 of the Prime Minister stipulating the State budget support rendered to political - social-professional organisations for activities associated with the State's tasks;

- Decree No.45/2010/ND-CP on 21st April 2010 of the Government providing for the organisation, operation and management of associations;

- Circular No.11/2010/TT-BNV on 26th November 2010 of the Ministry of Internal Affairs providing detailed guidance on implementing the Government's Decree No.45/2010/ND-CP on 21st April 2010;

- Decree No.33/2012/ND-CP on 13th April 2012 of the Government supplementing some articles of the Government's Decree

No.45/2010/ND-CP on 21st April 2010...

A general assessment of the amendments in legal acts governing this issue results in the following observations:

- The law has provided a relatively adequate legal corridor for non-profit organisations - an important basis over which to establish a modern Law on Associations;

- In practice, despite many challenges ahead, the legal framework has enabled CSOs to have discussion sessions with the government on issues related to the government's policies, including economic policies;

- Legal provisions were created with the mentality that the role of the State is to help associations, to "kickstart" initial operations of CSOs. This is perhaps the cause of "state-owned" social institutions (subsidization) and which distorted the self-regulating and self-governing nature of CSOs.

Despite the above advantages, when put into comparison with international practices, Vietnam's legal provisions on associations have revealed many inadequacies and limitations, especially in the current context of global integration, as follows:

- On the legal document: according to the Party's Resolution and the country's Constitution, namely, Article 25 of the current Constitution stipulates that: citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstrate. The exercise of those rights shall be prescribed by law. However, so far, the Law on Associations have not been enacted.

- On the amended principle and content, there are a few limitations:

+ The ask-give mechanism hinders the promotion of human rights (including international conventions) and still prevails extensively (Associations are the extended arm of the State); it regards CSOs as a “sensitive” sector over which the State needs to keep a close eye;

+ The State has yet realized the real value of and the need to mobilize the inner strength of social organisations for the benefit of economic development, including for perfecting economic policies and activities, namely:

1. Registration for the establishment of associations is time-consuming and depending on the discretion of state management authorities;

2. Foreign organisations and individuals do not have the same rights as Vietnamese citizens when establishing an association.

3. Activities of associations with no legal status at the community are not recognised.

4. Stipulating in general terms “specialised ministries” allows the State to enact sub-law documents that can interfere in the activities of associations, as in the governing ministry mechanism. There are at least 3 authorities governing associations: Ministry of Internal Affairs, the specialised ministry, and the provincial People’s Committee, resulting in a complicated and time-wasting administrative mechanism.

5. Absent of clear provisions on financial and fiscal preferential schemes for associations, as the State is yet to classify the purpose of

work of associations as civic support and for community interest.

6. Areas where associations are prohibited to operate are defined too vague: violating the country’s habits and customs, traditions, the nation’s history and culture,... which may give way to the State’s discretion and limit the association’s right to freedom of operation.

7. The inspection and audit mechanisms of associations remain unclear, failing to promote their efficiency in practice; may result in activities that go against the association’s purpose and charter, affecting national security and social safety and order.

3. Some theoretical and practical issues in the new context

Recent research has revealed the need to acknowledge and assess in an objective and dialectical manner the role and capacity of the third (and backbone) component of the social structure. *In broad terms*, civil society is a social space where individuals know to unite with one another to solve their own problems and not expect for State intervention.

In narrow terms, civil society is known as the “kingdom” of organisations, associations with the following characteristics: (i) it includes non-state organisations; (ii) it operates on a voluntary (but organised) basis; (iii) it is financially independent (self-managed); (iv) it has diverse operational scale, forms, institutional structure; (v) it regards community development as its overarching objective.

Market economy is an economy where buyers and sellers interact based on the law of demand and supply, of prices in order to

determine the price and quantity of goods and services on the market. Here, members and civil society organisations are market participants but not only as consumers.

Marc Morje Howard once said: “The state is neither the opponent nor the antithesis of civil society, but rather its cooperative partner”. When discussing the relationship between the State and civil society in Russia, Marcial Weigle supported the “partnership” model and considered that we should not see the relationship as a “boxing match” because it actually resembled more like “a dance of two unequal partners”. The State should step onto the dance floor and make the first move, otherwise civil society would not be able to join the game⁽⁴⁾. On the relationship with the market, Kurup argued that civil society “can help develop an accountable, self-regulatory, efficient, reproductive and competitive market system. The interface between civil society and markets will strive to generate a civil economy”⁽⁵⁾.

A rule-of-law State, a market mechanism and civil society do not appear spontaneously out of thin air in the movements of civilized societies. History showed that: during their evolution, up to a particular point, human societies will naturally advance from pre-modern to modern models. The fundamental sign of that conversion process is the arrival of three subjects: a rule-of-law state – the state that governs society using constitutions and laws; a market economy operating according to the law of demand and supply; and, civil society made of free citizens. The

three subjects form a complete and consistent structure of a modern society. Within the system, each component undertakes a highly specialised function. If the state regulates social relations by a legal system and the market is in charge of producing, distributing and circulating goods, the civil society will fill in the “functional gap” that the state and the market left behind. *Therefore, the relationship between civil society and the state and the market is multi-dimensional, reciprocal and interactive.*

Based on the actual understanding of this issue in Vietnam, I would like to alert two problems:

Firstly, the misperception of the nature or “political” objective of non-state organisations and institutions, resulting in misunderstanding them as opponent or competitor of the state for power. Accordingly, many State bodies, Party agencies have become overly concerned with such organisations, leading to direct interference in the organisation and operation of such liberal, voluntary and self-regulatory institutions. Distortion of the nature and objective of CSOs has become a threat. On the other hand, idealizing the role and influence of CSOs would also be extreme as after all, CSOs do not have economic power and neither are they the owner of public power.

⁽⁴⁾ Vu Duy Phu (2008), *Civil Society: Selected Issues*, Tri Thuc Publishing House, Hanoi.

⁽⁵⁾ Nguyen Tran Bat (2010), *Interview with NGO Resource Center on Civil Society*, 30th Oct., <http://chungta.com>

Secondly, the misperception has led to the denial or failure to realize the ability of society, social organisations to influence and contribute to economic stability and development. Meanwhile, an economy cannot survive if investors only interact with the State.

Each year, the Vietnam Chamber of Commerce and Industry (VCCI) collects information on the investment climate of provinces in order to generate a provincial competitiveness index (PCI). The ranking has created a huge pressure for improving the investment climate in different sectors, contributing significantly to economic development goals. No kind of directive or legal provision would be able to do this task better as local authorities would not or would hardly be able to change without an echoing voice from the business community via the VCCI.

As the Vietnam Economic Times wrote: *“Perhaps, only by being under the pressure of the public, of civil society, of subjects with great influence over the business climate, would we be willing to undertake fundamental changes and establish a solid foundation over which to vigorously develop the entire economy”*⁽⁶⁾.

4. Orientations, solutions to enhance the role of CSOs in developing a socialist-oriented market economy

With the above perception and actual state of the role of social organisations in general, and with their contribution to developing a market economy in particular, starting from the role and inherent position

of a sector located between the State and the market, and especially since the gaps in the bureaucratic apparatus and in the profit-making machines cannot be filled, the first most important thing that needs to be done is to “rely more” on this social force.

Perhaps, in the socio-economic development strategy and guidelines, we need to acknowledge a greater role of non-state institutions to encourage them to “share the flame” with the State and capitalists in developing the country’s economy.

In order to do that, it is crucial to realize the need to “task share” with this force. From the perspective of the State, the regulatory limit and territory of the State should be clarified. The State needs to have a roadmap by which it recedes to its position as owner of public authority in the economy (the tax authority) and allows for social forces to emerge (through socialisation) as tools and instruments taking part in economic management. In the meantime, the State resources are not limitless while social forces (according to forecasts) are plentiful and the effectiveness of State management is usually lower than general, yet, the State still continues to provide public services at a loss. Doesn’t it mean that we are wasting social resources?

At this point, we should address the question of how not to make social organisations become “the extended arm of the State” or the “profit-maximisation investor” when they

⁽⁶⁾ Nghia Nhan (2011), “Civil Society, from PCI to MEI”, *Vietnam Economic Times*, issue of 29 November.

are executing this function. This problem can only be tackled if the law stipulates with different methodology the output of this activity than when regulating business activities on the market. That is called the public law. Accordingly, the measure of all procedures and products or service... should be governed as compulsory, specific and consistent, thus, no matter if the executive body is the State, non-state or foreign, products brought into the economy will not differ from one another.

In the order of a rule-of-law State, law amendments will definitely be an important activity. So far, under the motto “we speak and act by resolutions” and “the Constitution is the core legal act”, we have failed to enforce a Law on Associations (although on another aspect the provisions of the Constitution has direct effect). This delay might originate from many causes, one of which is related to the theoretical and practical perception in guidance-issuance. It should be noted that, according to the basic principle of legal transaction and supremacy of the Constitution, not following the “advice” of the Constitution means not following strictly the Constitution.

On formulating the Law on Associations, I would like to give the following suggestions:

- First of all, based on the actual political and legal systems, the subject of the amended Law should not include socio-political organisations.

- The freedom to association is not an absolute right according to the International

Covenant on Civil and Political Rights of 1966. Therefore, in order to ensure public and social order, there is a need for binding regulations on procedures or restrictions. However, (i) This restriction should only be stipulated by the Law and all provisions on procedure should not be restrictive in nature, and (ii) Restriction levels should be stipulated with specificity and transparency to prevent discretionary behaviour.

- Regarding the establishment, organisation and operation of associations, the principle of equal treatment between the State and citizens should be illustrated through some main provisions of the Law on Associations as follows:

+ Eliminate the governing mechanism when establishing and managing associations, implement the registration system instead of the “permission-seeking” system as before;

+ Ensure the right of associations, of members of associations to file complains to administrative agencies, to initiate lawsuits to the court regarding actions that violate the right to association and other legitimate rights and interests of associations and people’s organisations;

+ Disputes arising between associations and competent State agencies should be settled in court and not imposed upon by administrative decisions;

- Associations with legal status and those with no legal status should be recognised;

- There should be no discrimination between Vietnamese citizens and foreign citizens when it comes to the right to association.

